

REPORT

OF

**JUSTICE K.N. SAIKIA COMMISSION OF INQUIRY
ON THE FIRST GROUP OF SEVEN CASES**

ON

SECRET KILLINGS

**SUBMITTED TO THE GOVERNMENT OF ASSAM
ON**

August, 21st. 2006

JUSTICE K.N.SAIKIA COMMISSION OF INQUIRY
ROOM NO. 27, CIRCUIT HOUSE, GUWAHATI.
Date. 12. 12.2006.

This is to clarify that the pagination of the Report on the First Group of Seven cases has a discrepancy in that after Page No 69, the next page number is 75. This discrepancy has been due to change in the format in the Computer, and not due to any other cause. The contents are continuous, and no page is missing. This discrepancy may be removed while reprinting the Report in press.

K.N. Saikia

(K.N.Saikia)
Commission of Inquiry

PROLEGOMENA

This Report of Justice K.N. Saikia Commission of Inquiry is on its first group of seven "killing cases," popularly known as "Secret killings." There are 18 more similar cases of the same period for inquiry as per the same Govt. Notifications. Though basically criminal, the subject, on facts, has been found to have acquired some political flavour, of which the Commission tried to steer clear.

The Commission has been gratefully overwhelmed by the kind response and co-operation it has received from the Government of Assam and all sections of the people of Assam..

The Commission held the inquiry in public and all concerned have been given full and equal opportunities to state and defend their cases. However, forgetfulness of some of the star witnesses caused some difficulty in appreciation of evidence.. From the evidence on record of these seven cases under inquiry certain findings and generalizations, beyond reasonable doubt, as will have been gathered from this Report, have been arrived at, and these are for kind consideration of the State Govt..

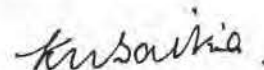
During the course of hearing, the enormity of the problem of "secret killing" could be seen. One Hon'ble Chief Minister of Yester years mentioned the figure as 365. There were submissions against wanton violations of constitutional and human rights, and of the procedures prescribed by the Code of Criminal Procedure and the corresponding instructions under military law, for dispersal of Unlawful Assemblies.

The "encounter" appeared to be the vanishing point of all human and constitutional rights to life and liberty.. If it is surely not applicable against our own citizens, unarmed, and in their lawful abodes and their place of work for a living.

The immediate preventive measures recommended are, immediate restoration of normalcy, cease fire, putting an end to Disturbed Area declarations, successful peace talks, and gradual dismantling of the Unified Command Structure. Long term measures are, meticulous following of the provisions of the Constitution and the laws of the country, improving all round administration of the State including the police Department.. and law enforcement.

The Commission sincerely desires that this Report on a rather stale subject should not disturb the even keel of the society; and for that it has suggested the insolvency principle of the defaulter, on declaration, being given a fresh start in life. This is for the sake of peace and tranquility in the society.

The Commission records the sincere services rendered by the Secretary, Mrs. Seema Rekha Bhuyan and the Deputy Registrar, Shri Krishna Prasad Dahotia, and the office staff, particularly that by Shri Mridul Saikia who also served as a steno on occasions. The fourth grade staff also deserve mention. .


(K.N. Saikia)
Chairman

Justice K.N. Saikia Commission of Inquiry

REPORT OF
JUSTICE K.N. SAIKIA COMMISSION OF INQUIRY
ON THE FIRST GROUP OF SEVEN CASES
(Submitted to Government of Assam on 21.8.2006)
PART. I. INTRODUCTORY.

By Notification No.PLA .331/2005/1 dated the 22nd. August 2005, the Governor of Assam, in exercise of powers under section 3 of the Commissions of Inquiry Act, 1952, hereinafter called "the Act," has been pleased to appoint this Commission of Inquiry, hereinafter referred to as "the Justice K.N.Saikia Commission of Inquiry," to inquire into each of the six cases, involving eleven deaths, namely,

- 1 Dimba Rajkonwar, Dibrugarh P.S. Case No. 387/98. Date of occurrence 11.8.982
- 2 Phuleswari Das & 3 others, Barama P.S. case No.76 of 98. Date of occurrence 12.8.98.
- 3 Rajesh Misra & Rajib Koch, Tezpur P.S. Case No.541/99. Date of occurrence 28.9.99
- 4 Dipak Choudhury, Belsor P.S. Case No. 132/2000. Date of occurrence 7.12.2000.
- 5 Jyotish Sarma, Geeta Nagar P.S. Case No. 1/2001. Date of occurrence 3.1.2001.
6. Dwijen Haloi & Phulen Haloi, Nalbari P.S. Case No. 5/2001. Date of occurrence 4.1.2001.

By Notification No.331/2005/2 dated 3rd. September 2005/2, in continuation of the earlier Notification No.331/2005/1 dated 22.8.2005, the alleged attempted murder case of Shri Ananta Kalita of Hajo P.S. case No. 155/99, Date of occurrence 16/17.9.99 midnight was added to the list of cases. By a later Notification No. PLA.331/2005/2-A in continuation of the preceding Notification No, PLA 331/1005/2 dated the 3rd. September 2005 the Government of Assam was pleased to order that the Commission shall inquire into any other incidents of killings under similar circumstances which occurred during the period from January 1998 to 2001 and also the alleged attempted murder case of Ananta Kalita of Hajo on the same terms of reference. :

2. By virtue of the aforesaid Notifications the Commission is to inquire into, in each case. the following attempted murder of Shri Ananta Kalita of Hajo under the same terms and conditions "as stipulated in the earlier Notifications" Besides the above specified cases, the Government of Assam has allowed the Commission to inquire into some more cases from the Goalpara district. There are also number of cases pressing for inclusion in the list.. The total number may go up; and will be inquired into and reported. in the sequence they are received. The Commission, herein, humbly reports on the first group of seven cases, chronologically, to the Government of Assam for favour of kind consideration and acceptance. The Commission shall make utmost endeavour to expedite inquiry and reporting on the subsequently received cases *in seriatim* for favour of kind consideration and acceptance. The following are the terms of reference:-

- "(a) Circumstances , in each case, leading to the killing of the above mentioned victims.
- (b) Identity of the killer(s) and accomplice(s), if any.
- ✓(c) To find out whether there was any conspiracy in targeting the victims and the motive behind such killings.
- (d) Pinpoint responsibility on persons who were involved directly or indirectly in the commission of such killings.
- (e) To make recommendations to prevent recurrence of such killings.
- (f) Any other matter related to or relevant to the purpose of this inquiry;"

3. The rights and interests of the citizens of our country are guaranteed by the Constitution and the laws. of India The Commissions of Inquiry Act, 1952 is an enactment meant to meet the evergrowing demand for public enquiries by independent and impartial authority. Though its inquisitorial procedure is considered by some to be "alien to the concept of justice", yet, as has been observed by the English Royal Commission on Tribunals of Inquiry, 1966, (Para 28 of its

Report) "there are exceptional cases where such procedures must be used to preserve the purity and integrity of public life without which a successful democracy is impossible." According to that Commission, "it is essential that on the very rare occasions when crisis of public confidence occurs, the evil, if it exists, shall be exposed so that it may be rooted out, or if it does not exist, the public shall be satisfied that in reality there is no substance in the prevailing rumours and suspicions by which they have been disturbed." It may be recalled that, at the very outset, this Commission in response to a question, expressed that in democracy it is always safer to find out, and act, on the truth and not on suspicions and rumours. This Commission of Inquiry may be viewed in that light. The Commission accordingly considers it to be its bounden duty to make and direct all the necessary search and investigation and examination of the witnesses in search of the truth so as to restore public confidence in democratic institutions.

4. Persons likely to be prejudicially affected have been heard. The Commission has fully complied with the provisions of section 8B of the Commissions of Inquiry Act, 1952. It is known that the purpose of the Commission is to investigate and report; and anything that follows upon the Commission's findings is matter for political action, unless, of course, something emerges for civil suit or criminal prosecution. The proceedings of the Commission have been held in full public blaze observing the principles of natural justice giving full and equal opportunity to all concerned to state and prove their cases and to disprove allegations and defend themselves, as the case may be. The Commission has maintained neutral, judicious, and temperate approach to all the accusations, allegations, and rumours, being informed by justice, equity and good conscience.

5. Throughout the proceedings the Commission has been assisted by the learned senior Advocate Dr. Y.K. Phukan, Senior Advocate and learned counsel Shri Diganta Gogoi, Advocate. The Government of Assam has been represented throughout by Shri P.K. Musahari, the learned Senior Government Advocate, Assam and Shri Dhanesh Das, learned Government Advocate, and additional Public Prosecutor, Assam.. The individual witnesses, other than Government officers, have been represented by their own learned counsel. The notices under section 8B of the Act have been allowed to engage their own counsel. Thus, none remained unrepresented before the Commission.

6. The Sequence. As per the aforesaid notification, the Commission is to inquire into "in each case" the formulated common terms of reference "and any other matter with recommendations, if any. While the findings of facts and the decisions, in each case, will be different, the reasons for the decisions and the laws applicable thereto may be somewhat common. It is, therefore, considered proper to discuss the common elements in "Part. 1: Introductory", before the individual cases are dealt with so as to avoid repetitions in each case. in the report.

7.. Secret Killing. Though the Notifications have not used the epithet "secret", before the word "Killing", one of its terms being to find out the identity of the killers and their accomplices, if any, the subject matter of this enquiry has popularly been expressed as "Secret killing". Though we have to go by the language of the Notifications, we have in mind the popular expression also in so far as it is not inconsistent with the Notifications of killings. The expression "secret killing" has not been used in the Notifications appointing this Commission. We have, therefore, to accept its dictionary meaning. A killing may be secret as to the act of killing and/or as to the identity of the killers and/or as to the time or place of killing. The dictionary meanings of "secret" are: Chambers Twentieth Century Dictionary- kept back from knowledge of others; guarded against discovery or observation; unrevealed; secluded and the like;

Concise Oxford Dictionary (10th Ed.)- not properly understood,, a mystery; something kept or meant to be kept a secret. (This is, of course, a *petitio principii* ; Oxford Advanced Learner's Dictionary. (6th ed.) - a thing that is not yet fully understood i.e., difficult to understand; New Collins Concise English Dictionary (1987,Rupa paperback) - something kept or to be kept hidden, something unrevealed; Webster's New Twentieth Century unabridged (2nd. Ed.)-secretive, Keeping one's affairs to oneself, close, concealed from sight or notice, The Random House Dictionary of English Language College Ed.- done, made or conducted without the knowledge of others; a method, formula, plan etc., known only to to the initiated or the few. Black's Law Dictionary (5th ed.)-concealed, hidden, not made public, particularly in law kept from the knowledge or notice of persons liable to be affected by the acts, transactions and deeds or other things spoken, something known only to one or few. We have to accept the common connotation from the above dictionary meanings. In the context of this inquiry, it may also mean unrevealed, uncommunicated, unwitnessed, unnoticed, unknown; kept hidden, inevident, secretive, close, undetected and clueless.

8. Task ahead. Accepting the above meaning, by connotation, our task may be difficult but not daunting. In the absence of animate direct evidence, there may be inanimate circumstantial evidence which do not lie. Again, even in the absence of direct evidence of the actual act of killing, or identity of the killers, there may be evidence of preceding and subsequent moments of the acts of the killing enabling one to connect the threads of evidence.

The best evidence rule ."Phipson on Evidence," 9th ed. P. 51 under caption : "The Best Evidence Rule. Strict Proof" Says: "The maxim that "the best evidence must be given of which the nature of the case permits." has often been regarded as expressing the great fundamental principle upon which the law of evidence depends. Although, however, it played a conspicuous part in the early history of the subject, the maxim at the present day affords but little practical guidance. The applicability of the rule depends on the nature of the subject to be proved. In the complicated nature of things today the emphasis has somewhat changed. (P. 53) According to Phipson,"In the ,present day, then, it is not true that the best evidence must, or even may, always be given, though its non-production may be matter for comment or affect the weight of that which is produced. All admissible evidence is in general equally receivable. Thus, circumstantial evidence is no longer excluded by direct, and even in criminal cases the *corpus delicti* may generally be established by

either species, or, indeed, by the defendant's mere admissions out of Court".

Best also on "The Principles of The Law of Evidence." (9th ed) in its Introduction (pp.4-5) said:

6. "With regard to intensity of persuasion, the faculties of the human mind are comprehended in the genera, knowledge and judgment. 1. By "knowledge" strictly speaking, is meant an actual perception of the agreement or disagreement of any of our ideas ; and it is only to such a perception that the term "certainty" is properly applicable. Knowledge is intuitive when this agreement or disagreement is perceived immediately, by comparison of the ideas themselves; demonstrative when it is perceived mediately, i.e, when it is deduced from a comparison each with intervening ideas which has a constant and immutable connection with them, as in the case of mathematical truths of which the mind has taken in the proofs, and lastly through the agency of our senses, we obtain a perception of the senses the existence of external objects, our knowledge is said to be sensitive. But knowledge and certainty are constantly used in a secondary sense, which it is important not to overlook; viz, as synonymous with settled belief or reasonable conviction; as when we say that such a one received stolen goods knowing them to have been stolen or that we are certain or morally certain, of the existence of such a fact etc."

7. 2. "Judgment", "the other faculty of the mind though inferior to knowledge in respect of intensity of persuasion, plays quite as important a part in human speculation and action, and, as connected with jurisprudence, demands our attention even more. It is the faculty by which our minds take ideas to agree or disagree, facts or propositions to be true or false, by the aid of intervening ideas whose connection with them is either not constant and immutable, or is not perceived to be so.. The foundation of this is the probability or likelihood of that agreement or disagreement, of the truth or falsehood, deduced or presumed from its conformity or repugnancy to our knowledge, observation, and experience. Judgement is often based on the testimony vouching their observation or experience but this is clearly a branch of the former, as our belief in such cases rests on a presumption of the accuracy and veracity of the narrators."

As the saying goes. "a truth like murder will be out". A sequentially integrated evidence may lead to the truth. This is reminiscent of what John George Phillimore wrote in his "History and Philosophy of the Law of Evidence.":

"It has been the habit of our writers to consider law not as it ought to be considered as the province of a vast continent locked in on every side by contiguous territories, but as an island cut off from all communication from other districts – as a sort of Japan in the geography of the mind. But though the full knowledge of the truth belongs to God alone, yet is the pursuit of it man's most exalted privilege, as indifference to it is the attribute of the beasts that perish."

It is accordingly considered to be the most exalted privilege of this Commission to act in pursuit of the truth in the matters of the specified secret killings, in terms of their reference, not in isolation, but in the social milieu, with utmost humility, responsibility, and endeavour to rise above sub-standard justice. We have to bear in mind that while in civil matters the required standard of proof is "preponderance of probability", in criminal matters the required standard is "beyond reasonable doubt." And to those who have lost their near and dear ones whose killers may not be definitely ascertainable in this process, they may appropriately be reminded of what the very high authorities in the law of evidence have expressed, namely, that in case of murders committed in lonely lanes under cover of darkness leaving no traces or evidence whatsoever for law of evidence for finding and punishing the murderer, do not think that he escapes God's punishment. He will surely suffer from the mortal anguish in his heart for having committed the murder and that will torment him till he confesses before his death, as has often been actually seen in every society throughout the world.

9. The inquiry being inquisitorial, the Commission has to gather the facts inquisitorially. the matter being rather stale, public co-operation will be inevitable. In the absence of any Rules made by the State Government of Assam, the Commission decided to follow the Commissions of Inquiry Central Rules, 1972 *mutatis mutandis*. Notifications/Notices were issued under Rule 5(2) (a), and 5(2) (a) & (b), and also under Section 8B where necessary. The parties, including Govt., examined their witnesses who were also cross-examined by Commission's, Government's and opponents' counsel. The parties were given full and equal opportunities; and the principles of natural justice were fully complied with.

10 (A). Special Police Officers. In case of need, there are provisions for augmenting the police staff by appointment of Special Police Officers. The Police Act, 1861 contains the following provisions for appointment of Special Police Officers (SPOs)

S. 17. Special Police Officers. When it shall appear that any unlawful assembly or riot or disturbance of the peace has taken place, or may be reasonably apprehended, and that the police force ordinarily employed for preserving the peace is not sufficient for the preservation and for the protection of the inhabitants and the security of property in the place where such unlawful assembly or riot or disturbance of the peace has occurred, or is apprehended it shall be lawful for any police officer, not below the rank of Inspector to apply to the nearest Magistrate to appoint so many of the residents of the neighbourhood as

such police officers may require, to act as special police officers for such time and within such limits as he shall deem necessary; and the Magistrate to whom such application is made shall, unless he sees cause to the contrary, comply with the application. .

S.18. Powers of special police officers. Every special police officer so appointed shall have the same powers, privileges and protection, and shall be liable to perform same duties and shall be amenable to the same penalties, and shall be subordinate to the same authorities, as the ordinary officers of police.

S.19. Refusal to serve as special police officers.- If any person being appointed a special police officer as aforesaid shall, without sufficient cause, neglect or refuse to serve as such, or to obey such lawful order or direction as may be given to him for the performance of his duties, he shall be liable upon conviction before a Magistrate, to a fine not exceeding fifty rupees for every such neglect, refusal or disobedience."

Appointment of SULFA members as special police officers in terms of the aforesaid provisions may or may not have been questionable. There has been no evidence of such appointments.

(B). Police Reserve.- Assam Police Manual Part III, Chapter I Rules 1 to 5 contains the description of the "Reserve." Under Rule 1, the Assam Police Force is divided into two main branches, viz. unarmed and armed. The armed branch comprises (a) a force specially trained in the quelling of disturbances and quasi-military duties, known as the Armed Police Reserve. (b) a force for supply of guards and armed escorts, (c) armourers and buglers, and (c) the River Police. The unarmed branch comprises, amongst others, an ordinary reserve, in the rank of Constable, to provide for leave, sickness, training and other vacancies. The force consisting generally of the Armed Police Reserve which for the time being is located in the reserve lines, such portion of the armed branch as is not engaged on guard or escort duty, miscellaneous personnel of both branches, and the ordinary reserves both the armed branch and the unarmed branch in so far as not absorbed in filling temporary vacancies, is known as the headquarters force.

Rule 2 deals with the Armed Police Striking Force and the Emergency Armed Reserves.

- A. . The striking force – At all times a striking force of a minimum number of sections of the Armed Police (as may be ordered by Government) shall be retained at the headquarters of each district.

This striking force is maintained for dealing with local disturbances and shall be ready at all times for dispatch under the orders of the Deputy Commissioner at short notice, to any place where it is needed.

- B. Emergency Armed Reserve.- All Town Police and the staff of subdivisional headquarter police stations, in addition to their ordinary duties form also an emergency armed force, and are supplied with arms, accoutrements and ammunition for use when necessary on the same scale as the armed branch....

The Reserve Office. Rule 4 provides that the Reserve Office is a branch of the Superintendent of Police office, which is concerned mainly with matters connected with equipment, discipline and general management of the whole force of each district and should ordinarily be held in the reserve lines. There might be some readjustments within the rules. But there has been no provision for sheltering SULFAs within the reserve lines. Such sheltering is indicative of forging dangerous police-

SULFA nexus which is evident in most of this group of cases.

11. Conspiracy. In the context of the instant inquiry, conspiracy will mean criminal conspiracy as defined in Section 120A of IPC as follows:-

"when two or more persons agree to do or cause to be done .-

(1) An illegal Act, or

(2) An act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.- It is immaterial whether the material act is the ultimate object of such agreement or is merely incidental to that object.

This definition makes an agreement entered into by two or more persons to do an illegal act or a legal act by illegal means a conspiracy, the moment some act is done in pursuance thereto. It also makes an agreement to commit an offence itself a conspiracy. The gist of the offence is the agreement. The agreement which amounts to conspiracy will continue as long as the members of the conspiracy remain in the act and so long they are acting in accord and in furtherance of the object for which the agreement was entered into. In England the Criminal Law Act, 1977 defines conspiracy in Section 1(1).

"If a person agrees with any other person or persons that a course of conduct shall be pursued which will necessarily amount to or involve the commission of any offence or offences by one or more of the parties to the agreement if the agreement is carried out in accordance with their intentions, he is guilty of conspiracy to commit the offence or offences in question."

:- Though not applicable statutorily, the English definition will help understanding and application of our law on the subject.

Appointment of SULFA members as special police officers in terms of the aforesaid provisions may not be questionable, But otherwise it is always dangerous to empower any extra-constitutional authority to deal with matters involving human life and liberty. The police-SULFA nexus forged into an irresponsible authority jeopardising human life, liberty and rights is wholly unconstitutional; and the State must be held accountable for their unconstitutional activities..

. . Conspiracy. In the context of the instant inquiry, conspiracy will mean criminal conspiracy as defined in Section 126A of IPC as follows:

"when two or more persons agree to do or cause to be done .-

(1) An illegal Act, or

(2) An act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.- It is immaterial whether the material Act is the ultimate object of such agreement or is merely incidental to that object..

Abetment of a thing. As defined in Section 107 of the Indian Penal Code (IPC)

"A person abets the doing of a thing . who-

First- instigates any person to do that thing; or

Secondly- engages with one or more other person or person or persons in any conspiracy for the doing of that thing. if an act or illegal omission takes place in pursuance of that conspiracy , and in order to the doing of that thing ; or

Thirdly, Thirdly, institutionally aids, by any act or illegal omission, the doing of that thing.

Explanation -1. A person who, by wilful misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures. or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.; or (Illustration omitted).....

Explanation -2 Whoever either prior to or at the the time of commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act”.

Conspiracies are often secretly planned wherefore it is difficult to be established by direct evidence; and those can be proved by circumstantial evidence. It is this type of evidence that is generally available. In a liquor adulteration case where the accused took the plea that he was not a conspirator as he was not present in the meeting wherein it was decided, Supreme Court held that it was not material, because conspiracy can be proved even by circumstantial evidence; and that it is this type of evidence which is normally available to prove conspiracy. (AIR 1995 SC 1066 pr.21) Conspiracy is difficult to be established by direct evidence. However, there should be material showing connection between the alleged conspiracy and act done pursuant thereto.(AIR 1999 SC 1036). All the killings in these cases have been found to have been remote orchestrated; and these were caused after each of the ULFA families, or ULFA-related families failed to persuade their ULFA members or relatives to come for the peace talks inspite of cautioning the families, by armymen, the CRPF and the Assam policemen, that the consequences of failure would not be good for the families. The then Chief Minister himself got press appeals to persuade them, published by different literary organizations of Assam like the Assam Sahitya Sabha, the Bodo Sahitya Sabha. Etc. Having failed to receive the desired response, the conspiracy to kill members of those ULFA and ULFA-related families must have been hatched in secrecy. All of those who orchaestrated in the effort to bring ULFA members to the peace talks must have also been the co-conspirators in the killings.

12. In the absence of any Rules made by the State Government of Assam, the Commission decided to follow the Commissions of Inquiry Central Rules, 1972 *mutatis mutandis* Notices were issued under Rule 5(2) (a), and 5(2) (a) & (b) and also under Section 8B where necessary. The parties, including Govt., examined their witnesses who were also cross-examined by Commission's and adversaries' counsel. The parties were given full and equal opportunities and the Rules and the principles of natural justice were fully complied with.

13. Common characteristics of the first group of seven cases.. While answering the terms of reference in **each case**. We may also find the following common characteristics among the cases so as to justify a finding of a general plan of “ulfocide” i.e., killing of ULFAs, and their families and relatives, namely:

- ✓ 1. That each killing involved an ULFA family, or an ULFA- related family; and investigations mostly fizzling out or ending in Final Reports (F.R) or investigation pending but no clue. No charge sheet is submitted in any of the cases. .
- ✓ 2. That all the killings, except that of Dimba Rajkonwar which was in the evening, were committed at dead of night, and the assailants invariably spoke in Assamese to awaken the inmates for killing.victims.
- 3.. That assailants were invariably armed with sophisticated firearms of prohibited bores, and masked with black wrappers or caps, to avoid being identified.
4. That the weapons used in killing were invariably firearms of different sizes, bores and calibers, mostly of prohibited bores normally found in police-military situations
5. That as firearms of prohibited bores were mostly used; forensic/ballistic examination of exhibits were mostly avoided.or unduly delayed and investigation ultimately fizzling out.
6. That the vehicles used were mostly Maruti Gypsies & vans, and always without Registration numbers..
- ✓ 7. That there were police patrolling in the crime areas prior and posterior to, but not during the killings.

- ✓ 8. That the army was ubiquitous. By army we mean the armed forces of the Union deployed in Assam in aid of civil power. There was lurking evidence of Police-SULFA nexus in the killings, some of the latter being constituted into an extra-constitutional authority and used as the executioners. the *modus operandii* being to visit the family, ask members to persuade its ULFA member to surrender, failing which, to send an advance team to survey the location and structure of the house, then to send armed and masked men to the family house at dead of night, knock at the door to wake up the inmates and then drag him/them out and shoot him/them dead, or take him/them away and secretly kill and throw the bodies somewhere..
9. That there was general resentment and decry against the Unified Command Structure/ Chief Minister.
- ✓ 10. That there has been connivance of SULFAs; and in no killing case any SULFA has been made accused or arrested.
11. That the investigation did not commensurate with the seriousness of the crime perpetrated.
12. That modern scientific methods of investigation, finger/foot prints, dog-squads were never used.
13. That no condolence message was sent from the Govt. of Assam to any of the victim families
- ✓ 14. That no ex-gratia/compensatory payment was made by the Govt. of Assam in any such case.
15. That in all the cases, except that of Shri Ananta Kalita, there is remote orchestrated ULFOCID, death penalty having been imposed on the victims for "status offences," of being members of ULFA or ULFA related families.
16. From some cases "remote orchestration" and principle of "kill and get killed" are deducible.
- ✓ These common characteristics prove remote orchestration from an apex source of conspiracy committing ULFOCID through its instrumentalities including SULFAs as executioners.

14. The Unified Command Structure. As there has been lurking evidence of some limb of the Unified Command Structure in every case, the Commission considers it appropriate to discuss it generally here, leaving the particulars to be discussed in individual cases.

Article 246 of the Constitution of India deals with subject matter of laws made by Parliament and by the Legislatures of States. It makes the following distribution of legislative powers:

- (1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive powers to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule in this Constitution referred to as the "Union List".
- (2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule in this Constitution referred to as "Concurrent List".
- (3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws, for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule in the Constitution, referred to as the "State List".
- (4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the "State List".

The power of the State Executive are, no doubt, co-extensive with the legislative powers of the State Legislature but that does not mean that in order to enable the Executive to function

in regard to any matter there must be a law of the Legislature in existence relating to that subject or that the powers of the Executive are limited to the carrying out of those laws.

Article 257 of the Constitution of India provides for control of the Union over States in certain cases. The executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and the executive power of the Union shall extend to the giving of such directions to a State as exercise of the executive power of the Union, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose; and also to the giving of directions as to the construction and maintenance of means of communication declared in the direction to be of national or military importance subject to Parliament's power to declare those as national highways or waterways and regulate them. Thus it did not provide for Union assistance to States by deploying of armed forces or other forces of the Union. But, by the 42nd Amendment Act 1976, during the emergency, inserted Art. 257A which said:

“Assistance to States by deployment of armed forces or other forces of the Union.

- (1) The Government of India may deploy any armed force of the Union or any other force subject to the control of the Union for dealing with any grave situation of law and order in any State.
- (2) Any armed force or other force or any contingent or unit thereof deployed under clause (1) in any State shall act in accordance with such directions as the Government of India may issue and shall not, save as otherwise provided in such directions, be subject to the superintendence or control of the State Government or any officer or authority subordinate to the State Government
- (3) Parliament may, by law, specify the powers, functions, privileges and liabilities of the members of any force or any contingent or unit thereof deployed under clause (1) during the period of such deployment”

Consequently, Entry 2A was entered after Entry 2 of List I (Union List) which provided:

“2A. Deployment of any armed force of the Union or any other force subject to the control of the Union or any contingent or unit thereof to any State in aid of the civil power, powers, jurisdiction, privileges and liabilities of the members of such forces while on such deployment.”

Entry 2A of List I “Union List” was inserted consequent upon insertion of Article 257A clause (3) by the 1976 Amendment Act. When the Art. 257A was later repealed by the 44th Amendment Act, which came into force in 1997, the consequential insertion of Entry 2A of List I “Union List” could not be effected as it was opposed by the then Congress Government. It is, therefore, still extant. The question, therefore, is, what will be the meaning and scope of Entry 2A? Logically speaking, when the cause was repealed, the consequence ought also to go, but for the expressed effective opposition to it in Parliament. So long it remains in the Constitution, it remains with its own vigour. After deletion of Art. 257A, Entry 2A may be relatable to Article 255 and not to any law and order situation, however grave it might be. On the other hand, while entering the Entry 2A to List I, no corresponding additional functions of the armed forces or other forces of the Union were prescribed for the forces deployed under the entry. For example, the Code of Criminal Procedure 1898 sections 129- provided:

“129, Use of armed forces. If any such assembly cannot be otherwise dispersed, and it is necessary for the public security that it should be dispersed, the Magistrate of the highest rank who is present may cause it to be dispersed ‘by the armed forces’.

130. Duty of officer commanding troops required by Magistrate to disperse assembly.

(1) When a Magistrate determines to disperse any such assembly by the armed forces, he may require any officer thereof in command of any group of persons belonging to armed

forces to disperse such assembly with the help of the armed forces under his command, and to arrest and confine such persons forming part of it as the Magistrate may direct, or as it may be necessary to arrest and confine in order to disperse the assembly or to have them punished according to law.

(2) Every such officer shall obey such requisition in such manner as he thinks fit, but in so doing he shall use as little force, and do as little injury to person and property, as may be consistent with dispersing the assembly and arresting and detaining such persons.

131. Power of commissioned armed forces officers to disperse assembly. When the public security is manifestly endangered by any such assembly, and when no Magistrate can be communicated with, any commissioned officer of the armed forces may disperse such assembly with the help of the armed forces under his command and may arrest and confine any persons forming part of it in order to disperse such assembly or that they may be punished according to law, but if, while he is acting under this section, it becomes practicable for him to communicate with a Magistrate, he shall do so, and shall thenceforward obey the instructions of the Magistrate as to whether he shall or shall not continue such action.

132. Protection against prosecution for acts done under this chapter, No prosecution against any person for any act purporting to be done under this chapter shall be instituted in any Criminal Court,

except with the sanction of the State Government, and-****

Provided that no such prosecution shall be instituted in any Criminal Court against any officer or soldier, sailor, or airmen in the armed forces except with the sanction of the Central Government."

It is pertinent to note that Chapter VII of the Manual of Indian Military Law (MIML) contains the corresponding military instructions/rules on "Duties in aid of Civil Power" whereunder unlawful assembly, riot and rebellion; Relations of Civil and Military Authorities; Powers and duties of Civil Authorities; Magistrate not available; Firing on Assembly; and Protection from Prosecution. The aforequoted provisions of the Code of Criminal Procedure have formed the basis of aforesaid military rules/instructions. It may also be noted that the Code of Criminal Procedure 1973 amended section 132 *inter alia* to the following effect :

"(d) no member of the armed forces doing any act in obedience to any order which he was bound to obey.

(3) In this section and in the preceding sections of this chapter

(a) The expression "armed forces" means the military, naval and air forces operating as lands forces and includes any other armed forces of the Union so operating,

(b) "officer" in relation to the armed forces means a person commissioned, gazetted or in pay as an officer of the armed forces includes a junior commissioned officer, a warrant officer, a petty officer, a non-commissioned officer and a non-gazetted officer,

(c) "member" in relation to the armed forces means a person in the armed forces other than an officer".

According to Justice Sarkaria Commission, "a perusal of the provisions of sections 130, 131 and 132 of the Code would show that they do not confer any direct right on the State Government to requisition the armed forces of the Union" and that "practical considerations, as indicated above, make it imperative that the Union Government should invariably consult and seek the co-operation of the State Government, if it proposes either to deploy *suo muto* its armed forces in that State or to declare an area as "disturbed", the constitutional position notwithstanding. It need hardly be emphasised that without the State Government's co-operation, the mere assertion of the Union Government's right to deploy its armed forces cannot solve public order problems" In Sarkaria Commission's report, Part II p. 978 it has

been stated that changes in List I had been suggested for the purpose mentioned in the concerned entry, namely, to provide centre's armed forces, para military and police forces shall be deployed in a State only at request of, or with the concurrence of the State. (Entry 2A, para 3.2) In para 3.2.1 of the report it is stated that Arts. 256, 257 and 365 were criticized by some States as anti-federal; and some States even suggested that if any instructions were issued thereunder, to a State, the Inter-State Council has to be consulted. In para 3.2.04 it has been said that these Articles ought to be used by Parliament only with the prior consent of the State. They are supposed to have intruded into the autonomy of a State and could lead to chain reactions in the State, and hence, the power should not be exercised unless consented to and co-operated by the State Government.

The Armed Forces (Assam and Manipur) Special Powers (Amendment) Act, 1972 (Act No. 7 of 1972) (5th April, 1972) amended the principal Act of 1958. It is now applicable "in the State of Assam, Manipur, Meghalaya, Nagaland, Tripura, Arunachal Pradesh and Mizoram" The amended Section 3 says: "If in relation to any State or Union territory to which the Act extends, the Governor of that State, the Administrator of that Union Territory or the Central Government, in either case, is of the opinion that the whole or any part of such State or Union Territory, as the case may be, is in such a disturbed or dangerous condition that the use of armed forces in aid of the civil power is necessary, the Government of that State or the Administrator of that Union territory or the Central Government, as the case may be, may, by notification in the Official Gazette, declare the whole or such part of such State or Union territory to be a disturbed area."

15. Creation of the Unified Command Structure. By Govt. of Assam Notification of the Govt. of Assam Political A Department, No PLA 271/95/223 dated the 24th January 1997, Order by the Governor, "In pursuance of Government of India's MHA's Order No. T-7/NS/97 dated 04.01.97 read with their Order No. T-7/NS/97, dated 16.1.97, regarding Army operations in the State of Assam, the following committees are constituted to operationalise actions against militant groups / insurgents / extremists.

1. Strategy Group: A strategy Group headed by the Chief Secretary to the Government of Assam is set up at the State Level with the following members (There are XII members headed by the Chief Secretary and including GOC Corps/ Chief of Army Staff 4 corps, Inspector General Operations, CRPF, BSF, and the seniormost representative of RAW. The Joint Secretary, Home & Political is the convenor and keeper of records and minutes.

2. Unified Headquarters: For operational purposes, a Unified Headquarters is set up with the following members: headed by GOC 4 Corps of the Army and including Director General of Police, Assam, the Brig. General, Staff of 4 Corps of the Army, I.G.P. Operations, Assam, I.G.P.s of (S.B.) Assam, B.S.F & C.R.P.F and representatives of SIB and RAW.

The terms of reference of Unified Headquarters would be: (a) To synergise counter insurgency operations conducted by Army, CPOs and State armed police including deployment and redeployment.

(b) to decide on modification of the areas of operations between the Army and the C.P.O.s vis-a vis the projected action plan. (c) To monitor the proceedings of the district level Co-ordination committees. (d) crisis management.

3. District Level Coordination Committee: The district level Co-ordination committees are constituted with six members headed by the Commissioner of Division as Chairman, and including the Deputy Commissioners, Superintendents of Police, Representatives of Army and para-military forces along with representatives of intelligence agencies as members. The

Committees would function at the district level on the lines similar to that for the State Unified Headquarters.

4. This order would be reviewed at the end of three months from the date of the first meeting of the Strategy Group. This arrangement shall be deemed to have come into force from 20th January 1997.

The Unified Command Structure is, thus, not a statute or statutory order. It is no doubt an order passed by His Excellency the Governor of Assam creating arrangement of co-operation between the State civil power and the armed forces and other forces of the Union deployed in the State in aid of civil power. Its utility will come to an end when the utility of the deployment of armed forces and other forces of the Union will no longer be required. The declaration of the area as disturbed area is also to come to an end. That is why therein is the provision for reviewing it at the end of three months. Restoration of normalcy avoids declaration under Assam Disturbed Areas Act as also under the Armed Forces (Assam & Manipur) Special Powers Act. Even when the Disturbed area declaration is continuing, no civil or constitutional rights are *ipso facto* suspended, so that the Army alone or operating with civil or CRPF, cannot violate the fundamental rights to life and liberty of the citizens of the area under operation of the Armed Forces (Special Powers) Act, 1958 as amended. It was on this principle that a Single Bench of the Gauhati High Court in *Indrajit Barua V, State of Assam*, (AIR 1981 Gauhati 4) stayed the operation of Section 4 of the Assam Disturbed Areas Act, 1955 and section 4(a) of the Assam and Manipur (Special Powers) Act, 1958, as amended in 1972, was stayed.

This provision also clearly envisages the use of the armed forces in aid of the civil power. In aid of the civil power does not mean irrespective, or in supersession, of the civil power. This provision is somewhat inconsistent with the federal structure, for it does not envisage any review or cessation of the order or decision by any judicial or impartial authority. It should not be that once a disturbed area will always remain a disturbed area. In view of the peaceful Assembly election having been held in 2006, the prevailing condition deserves a fresh look. The declaration as disturbed area can not be a substitute for President's rule. Thus a review will be consistent with the basic structure of our federal Constitution and any intrusion into the powers of a State and of its subjects will be violative of the basic structure of the Constitution and hence, *ultra vires*. The functions in aid of civil power have been ruled by law, and not by discretion. However, no such law has been shown to have been enacted after the addition of Entry 2A, so that the same provisions alone are to apply. This is important because putting the civilians exclusively under the army *ipso facto* affects their civil rights and to that extent discriminated against without authority of law. In the absence of any other law the power of the Union in this regard may be confined to Article 355 on duty of the Union to protect States against external aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of the Constitution. So the Constitution itself provides the ultimate limitations as also guidelines for the State..

Mr P. K Bora I.A.S.(Retd) who was the Chairman of the Strategy Group at the State level of the Unified Command Structure stated in para 3 of his affidavit that the United Command was required to synergise counter insurgency operations conducted by Army, Central Police Organizations and State Armed Police Force. It was also to do crisis management and to monitor the proceedings of the District level Co-ordination Committees. In para 5 of his affidavit Mr. Bora stated that he presided over a number of meetings of the Strategy Group at the State level and that "These were no way involved in the 'secret killings' and this deponent does not believe that the United Headquarters were involved either. The preoccupation of the Unified Headquarters was to carry out operations against the insurgents

and not against any member of their families.” This statement remained unchallenged in cross-examination.

The purpose of quoting these laws and instructions is to enable ourselves to scrutinize the activities of the armed forces, if any, coming in evidence in the cases. Their Lordships of the Supreme Court in *Naga People's Movement of Human Rights v, Union of India*, reported in (1998) 2 SCC 109: AIR 1998 S.C. 431, which was a case on the Armed Forces Special Powers Act, 1958, held that possibly if such deployment takes place with the consent of the State, the power to control of such armed Forces will belong to Parliament under the present Entry. What is contemplated by the Entry 2A is that in the event of deployment of the Armed forces of the Union in aid of the civil power in a State, the said forces shall operate in the State concerned in co-operation with the civil administration so that the situation which has necessitated the deployment of the armed forces is effectively dealt with, and normalcy is restored. Restoration of normalcy is to be the terminus of the deployment. In aid of the civil power implies that deployment of the armed forces of the Union shall be for the purpose of enabling the civil power of the State to deal with the situation affecting maintenance of public order which has necessitated the deployment of the armed forces in the State. It has also been held that the expression “aid” postulates the continued existence of the authority to be aided. This would mean that even after deployment of armed forces, the civil power will continue to function. That means, it is not supplanted. The activities of the armed forces, if any, coming in evidence in the cases has to be weighed and balanced on these principles.

16. Some idea of the extent and role of the contemporary forces operating in the socio-political arena of the State may be helpful for the inquiry. With its youthful sincerity and exuberance the All Assam Students Union (AASU) successfully mobilized public opinion against the influx of illegal migrants into Assam from foreign countries, including neighbouring Bangladesh. The activities soon turned into an agitation; and peacefully culminated into signing of the Assam Accord between the AASU and the All Assam Gana Sangram Parishad on the one hand, and the Central Government headed by farsighted Rajiv Gandhi on the other on 15th August 1985. However, prior to that one group of students and of public dissented to some of the demands, and joined the United Liberation Front of Assam (ULFA) which was formed at the ‘*bakori*’ (precincts) of the historic Rangghar of Sivasagar on 7th April 1979. with its demands including sovereignty for Assam. In the Bodo area of the State there was similar efforts for development and the National Democratic Front of Bodoland (NDFB) demanding a sovereign Bodoland emerged as a similar outfit confining its activities in the BODO dominated area. Among the Karbis of Karbi Anglong district, there was the K.N.L.F (Karbi National Liberation Force), demanding an autonomous State; and an organization for achieving it was formed called the Karbi Autonomous State Demand Committee. Their outfit is the Karbi National Liberation Front (K.N.L.F.) demanding sovereign Karbi Anglong. Among the Dimasas tribe of North Cachar Hills district also there formed a demand for separate State by its outfit the Dima Halan Daoga.(DHD) The Adivasis of Kokrajhar also have their outfit called the “Cobra Military”, with which also the Central Govt. is said to have entered into a cease- fire agreement which is said to have been extant. The agreeing group of AASU and the Assam Gana Sangram Parishad formed the Assam Gana Parishad (AGP) as a political party on 15th October 1985. The Assam Jatiatabadi Yuva Chatra Parishad (AJYCP) has been in existence side by side throughout the period pursuing the goals of development and welfare of the Assamese people. The Manab Adhikar Sanggram Samity (MASS) has been an organization for upholding and protection of human rights. The AGP formed the Government in Assam for two consecutive terms from 1995 to 27.11.1990 and from 1996 to 2001. It is during the second term, when Shri Prafulla Kumar Mahanta was the Chief Minister, that allegations of secret

killings were made and inquiry into those killings demanded. This Commission has been constituted to inquire into the secret killing cases included in the notification, and into the attempted murder case of Sri Ananta Kalita of Hajo, and all other secret killing cases that occurred in the State during the period from January 1998 to 2001. Four complicating factors during this period were, first, from the banned outfit ULFA; some members surrendered who, after their surrender, were called SULFAs and were kept under police protection; secondly, the deployment of the armed forces and other paramilitary forces of the Union "in aid of the civil power" in the State; and thirdly, the constitution and functioning of the "Unified Command Structure" conducting operations; and, fourth the police administration in the State. As Lord Srikrishna said, *chatusbarnang moya sristang guna karma bivhagascha*. So also the state of Assam itself could be said to have created all these four organs functionswise.

17. The nature and extent of public anxiety caused by secret killings in the State is evident from the following proceedings of the Assam Legislative Assembly dated 30.11.98 (translated from Assamese)..

Q. Dilip Kumar Saikia. *Subject: Loss of life in the hands of secret killers. Will the Hon'ble Chief Minister kindly inform (a) From First January 1998 till date in the City and other districts How many people lost their lives in the hands of secret killers with their names and addresses?

A. Shri Prafulla Kumar Mahanta (Chief Minister) A. There is no organization called Secret Killers.

Q. Dilip Kumar Saikia Hon'ble Speaker, Sir, Chief Minister said that there is no organization called Secret Killers. But in daily papers we see that Rituraj Gogoi who was the only eyewitness against Major Khan was killed by secret killers. As have been seen in papers at present in Sibsagar, Kamrup, and particularly at Guwahati against Major Khan, the secret killers have been killing even people from police, BSF and the army. Day before yesterday one Guwahati hotel owner was kidnapped and his dead body was found at Raha. As the news paper reports, things have come to such a pass that someone may lift Dilip Saikia also. Some Minister may also be lifted. There is no certainty about it. We want non-violent peaceful Assam. But instead of that now the secret killers have been carrying on such killings. Again, there is the news that the man who gave evidence against Joi Nath Sarma has also been killed by someone. Organisation or no organization, in these matters bold steps should be taken. In Sibsagar district itself two cabinet rank and one Minister of State are there The Ministers should take care of their own districts. Now our Government is in disrepute. The Government should adopt immediate measures to stop these activities.

A. Prafulla Kumar Mahanta.- Sir each of the secret killings has been inquired into. It is not possible to inquire all at a time. we seek nonviolent atmosphere in Assam. Few days earlier, the queen of Hatigaon was also killed. All of us should condemn it. All efforts are being made by Govt. with people's co-operation, it could be, we shall surely be able to regain peace.

Haliram Terang. Hon'ble Chief Minister has stated about inquiry on individual case basis. The Assembly session has come after six months. I do not insist about the killings during the last month, but we should be given the information about the killings during six months prior to that. We see that whether it is police or other persons, officer or business men those who have been secretly killed not even a single case has been enquired into and locate and punish the culprit. Therefore, excluding the last month, all cases during the period be enquired into and locate and punish the culprit. Therefore, excluding the last month, all cases during the prior six months list and their enquiry results should be furnished".

There was no specific reply to this question by the Chief Minister.

17. This Inquiry commission was preceded by two earlier Commissions on the same subject. Some of the Memoranda/ Affidavits submitted to either of the preceding Commissions have been accepted, on prayer of the memorialists or deponents, as the case might be, and were treated as their examinations-in-chief, and not otherwise. We now proceed to inquire into each of the first group of seven cases.

18 There has been evidence of SULFAs being sheltered in hallowed police reserve quarters in Nalbari and in private houses (camps) in different towns, other than Nalbari, and in the Usha Court at Guwahati. It has to be stated that the SULFAs themselves were victims of circumstances, having left their ULFA colleagues, forsaking violence and deprivation, they deserved adequate protection and rehabilitation in life. The package adopted by Govt in its Scheme seems to have proved to be inadequate, and needs improvement and expansion.

✓ The Constitution and the laws of India do not envisage or permit any setting up of an extra-Constitutional authority; and it is always dangerous to empower any extra-constitutional authority to deal with matters involving human life and liberty. The police –SULFA unholy nexus forged into an irresponsible extra-Constitutional authority, jeopardising human life, liberty and rights, as has been in evidence, is wholly unconstitutional; and the then executive department of the State must be held accountable for the dreadful, unconstitutional killings, endangering human lives in the State during the period under reference to this Commission. In so far as the provisions conform to the State's obligation to get the SULFAs rehabilitated in life, their evident use as trouble shooters, as in Ananta Kalita's time of admission into the GNRC when one hoodwinking SULFA Dilip Kakoti, coming with the Additional S.P. Shri P.k.Dutta, ordering the gathering to disperse by brandishing his pistol, and Ramen Kalita @ Deka going to Ananta Kalita's house in Kalitakuchi village of Hajo and forcibly kidnapping Ananta Kalita and take him to 4th/10th Assam Police Battalion camp at Kahilipara, and Krishna Hazarika and Bibek Nath to intercept and forcibly drag Rajesh Misra and Rajib Koch of Tezpur into one of the two vehicles and take them away with them, to be seen no more thereafter. It was surprising that Bibek Nath deposed that instead of surrendering at the Tezpur P.S. he came to Guwahati and met the then Inspector General of Prisons Shri G.M. Srivastava, who advised him to stay at Guwahati for two months and only thereafter he was asked to go back and surrender, and he did so. Shri G.M. Srivastava did not categorically deny the statement of Bibek Nath, but pointed out some inconsistencies therein, saying so many people came to him and Bibek Nath could have been one of them, and that if he advised him under those circumstances, it could be only to surrender. From the curiously common characteristics of the cases in this group, there seems to be no doubt that some of those were remote orchestrated, and we were on the look out for the remote element. Mr. Srivastava said that his post was earlier called I.C.P.(Law and Order) and now redesignated as I.G.P. (operations); and that his duties were confined to force deployment and co-ordination all under the D.G.P. He said that the popular concept of "operation" in the sense of doing something or carrying out something was not correct. This explanation given by the DGP is surely believable. But the question arises as to what was his function in the context of the Unified Command Structure wherein he was a member of the Strategy Group which is to operationalise actions against militant groups insurgents / extremists, and the Unified Headquarters which is for operational purposes.

It was in evidence in Barama case that SULFAs sheltered inside Police reserve were used as informers, guides and "spotters". Regarding the suspected SULFAs, it may be appropriate to observe that because of the position in which the SULFAs found themselves, between the ULFAs on the one hand and the Government on the other, the devil and the deep sea. their erstwhile colleagues having been antagonised by their act of surrender, they deserved adequate

protection and rehabilitation in life. But using their (SULFA's) services by the State Govt. as "guides", "spotters", trouble-shooters and collaborators in police functions, and money collectors could never be viewed as proper treatment meted out to the SULFAs, far less their being used as the striking arm in charge of the trigger. Let them now be bereft of the hallowed positions, and give them fair field and no favour, at least following the insolvency principle of allowing the declared insolvent to have a fresh start in life. How the erstwhile affected people will adore or avoid them, will be a different matter altogether.

19. Prohibited bores. Ascertainment of the types and calibres of arms and ammunitions used in commission of the crime may also lead to some clue. Material exhibits for forensic/ ballistic examination were sent quite late or not at all. By "prohibited" bores we mean bores prohibited by the Arms act. Section 7 of the Arms Act, 1959 provides: Prohibition of acquisition or possession or of manufacture or sale of prohibited arms or of prohibited ammunitions. -No person shall-

- (a) acquire, have in his possession or carry; or
- (b) manufacture, sell, transfer, convert, repair, test, or prove, or
- (c) expose or offer for sale, or transfer or have in his possession, for transfer, conversion, repair, test or proof, any prohibited arms or prohibited ammunitions unless he has been especially authorized by the Central Government in that behalf.

This Act provides for issue of licences for .12 smooth bore shot guns, .air rifles and .22 bore rifles for protection of crops and/or sports or target practice, as the case may be.. That means .32, .38 revolvers and .9 mm pistols are not to be issued to general public, but only to those specially authorised. by the Central Govt. in that regard.

Section 13 of the Act provides for grant of licenses. Under sub-section (3) thereof the licensing authority shall grant -

- (a) a license under section 3 where the licence is required -
 - (i) by a citizen of India in respect of a smooth bore gun having a barrel of not less than twenty inches in length to be used for protection or sport or in respect of a muzzle loading gun to be used for bonafide crop protection

Provided that where having regard to the circumstances of any case, the licensing authority is satisfied that a muzzle loading gun will not be sufficient for crop protection, the licensing authority may grant a license in respect of any other smooth bore gun as aforesaid for such protection; or

- (ii) in respect of a point 22 bore rifle or an air rifle to be used for target practice by a member of a rifle club or rifle associated licenced or recognized by the Central Government;

(b) A licence under Section 3 in any other case or a licence under Section 4, s, Section 6, Section 10 or Section 12, if the licensing authority is satisfied that the person by whom the licence is required has a good reason for obtaining the same. under section 5

Modi in his Medical Jurisprudence and Toxicology, Chapter XII dealing with "injuries by Mechanical Violence, gives an introduction to firearms and ammunitions. Under smooth bored firearms he includes Shotgun, which, he calls a shoulder arm having barrel that is smoothly bored inside and is intended traditionally for firing of a charge composed of one or more round lead balls or pellets of varying size. Rifled firearms have spiral grooves cut upon the inner surface of the bore to impart rotatory motion spinning in the longer axis thereby stabilizing the projectile thereby ensuring greater accuracy of impact and longer range. A rifle is also a shoulder arm designed to hit targets at longer range.

A pistol is a hand-gun in which the cartridge is directly loaded into the chamber of the barrel to distinguish it from a Revolver in which the cartridges are loaded into a rotating cylinder (or drum) in the rear of the breech of the barrel.

In Air Rifles and Air Pistols compressed air is used to fire lead slugs.

Jhala & V.B. Raju's Medical Jurisprudence, 4th ed., Chapter XXXII (p.316) says that "a fire-arm is capable of producing different types of injuries in different ways depending on proximity of or distance of the firearm, the type of the fire-arm and the type of tissue encountered, that is, the region of the body. Actual identity of the fire-arm is the job of a ballistic expert. But the forensic medicine expert has to know the specific type of injuries by various common types of fire-arms used."

Neither Modi, nor Jhala & Raju has dealt with the prohibited arms question. But HWV Cox Medical Jurisprudence and Toxicology, 7th ed. Chapter VII, while discussing injuries (p.454) under Rifled weapons says. "Rifled weapons are commonly encountered in military and police situations, and also high-powered hunting weapons designed for large animals. They are also employed in the air-rifles, weapons powered by compressed air provided by spring loading, with a caliber of 0.177 or 0.22 inches" There is, thus, an indication that rifle bored firearms are associated with police and the military.

At p. 464 the types of rifled weapons are described as under:

Revolver. The revolver refers to a common type of hand gun in which a number of cartridges with bullets inserted into their neck are rotated in a metal cylinder, so that a new one is brought into line with the barrel each time the trigger is pulled. The revolver tends to have a relatively low muzzle velocity of the order of 500 feet per second. The diameter of the barrel indicates the size of the revolver and common types are 0.45, 0.38, 0.32, or 0.22 inches. A revolver cartridge may be recognized by the fact that the base has a projecting rim which holds the cartridge in place in the cylinder. The bullet is frequently of lead without any jacket of a harder metal.

Automatic pistol is more correctly called a 'self-loading pistol' as instead of a rotatory movement as in the revolver, part of the gas pressure of each discharge is used to bring up a new shell into the breech. The new shells may be contained in a clip either in the stock of the gun or in a separate magazine. The automatic cartridge case does not have a projecting rim but a groove around the base where the ejector grips the shell case. Automatic pistols have many calibers, but those such as the Mauser, Beretta, Luger, etc., are calibrated in millimeters, commonly, 7.65 mm and 9 mm. The muzzle velocity of an automatic is greater than that of a revolver and may approach 1000-1200 feet per second. The use of prohibited bore weapon may be an indication of military/ police agency in commission of crime.

20. Earlier Inquiry Commissions. As regards the earlier series of Inquiry Commissions, the appropriate Government is vested with the jurisdiction to appoint or not to appoint a Commission of Inquiry under the Commissions of Inquiry Act 1952. It is also within the jurisdiction of the appropriate Govt to accept or not to accept a report submitted to it by the Inquiry Commission appointed by it. In *Boarder Security Force v, State of Meghalaya*, reported in AIR 1989 Gauhati 81 a Full Bench of the Gauhati High Court held that even where there is deployment of the armed forces and other forces of the Union in aid of civil power of a State, the State Government has the jurisdiction to appoint a Commission under the Commissions of Inquiry Act, 1952; and that such deployment could not be without a requisition or consent of the State Govt. The B.S.F. contention that its conduct in course of deployment in a State could not be inquired into by a State appointed Commission was rejected by the Full bench and this decision holds the field. There is, therefore, no question of staying the proceedings without any specific order from the Apex Court wherein a writ petition is stated, by Mr. Prafulla Kumar Mahanta, to be pending.

21 SULFAs. In this report when mention is made of SULFAs, the Commission always means only the concerned SULFAs, and not SULFAs as a whole. It is in evidence before the Commission that there are about 9,000 SULFAs out of whom only about 90 have been crime-associated. For this one in hundred all SULFAs ought not to be mentioned with

crimes. This is correct and just. It is accordingly made clear that when SULFAs are mentioned in a particular action, the Commission always means only those who are concerned with that action, and not the innocent rest of the SULFAs. Let it always be so understood.

22. Contemporary Popular Perplexity. The cases to be inquired into being of the period from 1998 to 2001, It may be instructive to know the contemporary nature and status of the problem of secret killings. The Official Report of the Assam Legislative Assembly Debates, October-November Session, No. 3. (pp. 67-68) * Speech not corrected. Shri Bharat Ch. Narah. (Translated from Assamese) Hon'ble Speaker, Sir. In the Amar Asam paper a news is published. Whom will the people believe now. I want to draw the attention of the Chief Minister. Different organisations of Assam have raised different questions. I was putting several questions in the past on this subject. The Hon'ble Chief Minister has not been able to give any definite reply on it. As against that some days earlier the Public Relations department of Assam published an advertisement against secret killing. Who is against secret killing, Govt. or the extremists? The Public Relations Department itself does not know whether it is Govt. or extremists. Secret killings are committed throughout the State. AASU has questioned who is committing the secret killings If the police If the Assam Govt. police cannot find out, then it should be given to CBI Therefore I want to call the attention of the Chief Minister. What is the position of the Govt. against secret killings? What measures are adopted by Govt. to identify the killers? Ananta Kalita of Hajo himself said that taking to the Battalion fying his eyes with black cloth, he was punished. In this case also the State Govt. is silent. Non-CRP people have taken to police camp and punished people. State Govt. has not told anything about it In Tezpur two persons have been kidnapped. In this also Govt is silent. Throughout the State the people have asked, is Govt. involved in secret killings? News papers have published Chief Minister calling D.G.P. has told him to control I.G.P. Srivastava. Chief Minister has not given any clarification. That is why the people have said Govt. knows about secret killing..." The Chief Minister replied that the Govt. was not in secret killing. This only shows the contemporary popular perplexity which provides the background for the Inquiry.

23, Remote orchestration. Generally speaking, as no two faces are alike, so also no two cases are alike. Even in cases included in a series, some variation is to be found. In fact, when they are found to be similar, the same judgment may cover. In the instant series of cases, many things are found to be similar, including facts leading to the incidents, the incidents themselves, their treatment by police, in different steps taken by police authorities, weakness shown to some persons, ineffectiveness of the investigative procedure, and even fizzling out of investigation, failure to find any clue and consequent failure to accuse any one, and failure to issue any charge sheets etc. All these raise a natural suspicion that the cases and the investigative courses of action have followed a particular pattern which would not be possible, unless there is some remote orchestration in respect of these cases. This hypothesis is being tested on basis of the facts on record.

24. Perpetuation of party's rule. While going through the evidence in these cases the question, though unlikely, comes to mind as to whether the motive could be to perpetuate the party's rule by resorting to "ULFOCIDE" while still in power. A deliberate killing of a race of a gene is termed "genocide", the deliberate killing of the ULFAs and their kiths and kins may be termed "ULFOCIDE" Facts appear to be stranger than fiction. Under the Constitution of India there is no scope for capturing power by villainy, that is, by treachery and cruelty, as could happen in the pre-constitution eras. Machiavelli in "The Prince" Chap. 8. discusses "Of Those Who Have Attained the Position of Prince by Villainy thus:

~~or to ability, th~~ “ But as there are still two ways of becoming prince which cannot be attributed entirely either to fortune ey must not be passed over, although one of them could be more fully discussed if we were to creating of republics. These are when one becomes prince by some nefarious or villainous means, or when a private citizen becomes the prince of his country through the favour of his fellow citizens. And in speaking of the former means, I will give two examples, one ancient and the other modern, without entering further unto the merits of this method, as I judge them to be sufficient for any one obliged to imitate them.

Agathocles the Sicilian rose not only from private life but from the lowest and most abject position to be King of Syracuse. The son of a potter, he had a life of the utmost wickedness through all the stages of his fortune. Nevertheless, his wickedness was accompanied by such vigour of mind and body that, having joined the militia, he rose through its ranks to be praetor of Syracuse. Having been appointed to this position, and having decided to become prince, and to hold with violence and without the support of others that which had been constitutionally granted him; and having imparted his design to Hamilcar the Carthaginian, who was fighting with his armies in Sicily, he called together one morning the people and senate of Syracuse, as if he had to deliberate on matters of importance to the republic, and at a

given signal had all the senators and the richest man of the people killed by his soldiers. After their death he occupied and held rule over the city without any civil strife. And although he was twice beaten by the Carthaginians and ultimately besieged, he was able not only to defend the city, but living a portion of his forces for its defence, with the remainder he invaded Africa, and in a short time liberated Syracuse from the siege and brought the Carthaginians to great extremities, so that they were obliged to come to terms with him, and remain contented with the possession of Africa, leaving Sicily to Agathocles. Whoever considers, therefore, the actions and qualities of this man, will see few if anythings which can be attributed to fortune; for, as above stated, it was not by the favour of any person, but through the grades of the militia, in which he had advanced with a thousand hardships and perils, that he arrived at the position of prince, which he afterwards maintained by so many courageous and perilous expedients. It cannot be called virtue to kill one's fellow citizens, betray one's friends, be without faith, without pity, and without religion; by these methods one may indeed gain power, but not glory. For if the virtues of Agathocles in braving and overcoming perils, and his greatness of soul in supporting and surmounting obstacles be considered, one sees no reason for holding him inferior to any of the most renowned captains. Nevertheless his barbarous cruelty and inhumanity, together with his countless atrocities, do not permit of his being named among the most famous men. We cannot attribute to fortune or virtue that which he achieved without either."

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PART. 2- INDIVIDUAL CASES

(1)

SHRI DIMBA RAJKONWAR KILLING CASE.

(Dibrugarh P.S. Case No. 387 of 98.)

(A) Circumstances leading to the Killing of Dimba Rajkonwar.

On 11.8.98 at about 6.45 P.M. one Ramu Upadhyaya, said to have been a resident of Jeevan Phukan Nagar, Dibrugarh, at the Milan Nagar Outpost of Dibrugarh Police Station, orally informed that two unknown motor cycle borne boys entered the Chowkidinghee ASTC Bus station and, after firing at a person, went away towards Amolapati. The outpost's General diary entry No.279 was made at 6.50 P.M.; and the ASI Shri K. Ahmed of Amolapati Outpost, the O.C. of Dibrugarh Sadar PS and the S.P. Dibrugarh district, Dibrugarh, were telephonically informed about it. The S.P. Mr K.C.Deka deposed that on receipt of the information he alarmed all the outposts to check all entry and exit routs, and sent police pickets thereto, but it took about 15-20 minutes time to arrange vehicles and personnel. The FIR was lodged with the O.C. of Dibrugarh PS, Police Inspector Shri Budhin Gogoi, on 12.8.98, by Smti Bharati Rajkonwari, widow of the victim, to the effect that in the evening of 11.8.98, at about 7 P.M. her husband Shri Dimbeswar Rajkonwar, when he was on duty inside the Chowkidinghee Bus station compound of the Assam State Transport Corporation, was shot dead by some unknown assailants, who later fled away. On the strength of the FIR Dibrugarh P.S. Case No 387 /98 was registered and investigated. By the time Smti Bharati Rajkonwari arrived at the P.O. at about 7 P.M. when Dimba Rajkonwar was already taken to the Assam Medical College hospital, Dibrugarh, and by the time she arrived there Dimba Rajkonwar already expired. She saw two bullet holes on his chest, blood still woozing out from the wounds. P.W. Smti Lakshimi Deka, in her Memorandum, submitted to Hon'ble Justice Meera

Sarma Commission on and on deponent's request accepted by the Commission, stated that she resided near the ASTC Bus station, P.O. C.R. Building, Dibrugarh and saw Dimba Rajkonwar, who was Yard Master (U.D.A.) of the Bus Station, that very evening of 11.8.98; and that "as soon as he approached the workshop, she saw two armed persons putting on black cloth around their heads, shot at him and after that they fled away on their motor cycle, and Dimba Rajkonwar fell to the ground, and that at that very moment she approached Dimba Rajkonwar with a jug of water to pour into his mouth, but she failed to do so seeing the tragic situation. Evidence showed that the Motor cycle of the assailants was kept in 'starting' position and the markman pillion rider got down, rushed towards Dimba Rajkonwar, shot at Dimba Rajkonwar twice, jumped back to the pillion, took a turn and sped away. This is corroborated by Smti Bharati Rajkonwari who saw two wounds on chest of her husband, and also by Inquest and post mortem reports. According to her (Lakhimi Deka) and Smti Anju Barkataki, whose Memorandum was also accepted by the Commission on her request, Dimba Rajkonwar was a well known social worker and was connected with many social organizations and the Dibrugarh Sahitya Sabha.

The wounds and weapons, as indicated by the material exhibits were sent for forensic/ballistic examination unduly late, and, in fact, only at the instance of this Commission that the report was collected as late as in 2006. The weapon used was of prohibited bore being .32 or .38 rifled bored Mauser or Tokerev Pistol, these being associated with only police-military situations. As Mr. B.D. Konwar pointed out, Dimba Rajkonwar was killed while on Govt. duty. It is relevant to note here that P.W. 4 Gangadhar Doley, the then Superintendent of the ASTC Bus station, Chowkidinghee, Dibrugarh, deposed that the two assailants after they shot down Dimba Rajkonwar fled away by the Rudali path, and not towards Amolapaty as was recorded to have been said by Ramu Upadhyay who never appeared before the Commission and seemed to be a person of shady character. If Mr. Doley's version is believed, and there is no reason why it should not be, the whole investigation in the case must be held to have been waylaid by Ramu Upadhyaya's statement as to the assailants fleeing towards Amolapaty which was in a different direction from that of Rudali path. Mr. Doley further deposed that the house, wherein some SULFAs were admittedly residing, was situate by the side of the Rudali path. The immediate focus for investigation being thus diverted, from Rudali path to Amolapaty, the culprits were allowed escaping time. Even otherwise, evidence shows that it took more than half an hour (longer than 15-20 minutes) in arranging vehicles and posting pickets on the escape routes as described by the SP. That might have been a cause for failure to nab the culprits in the not far-flung town of Dibrugarh.

(B) The identity of the killers and their accomplices, if any.

The killing of Dimba Rajkonwar was secret not as to time and manner of killing, but as to the killers' identity. It is a developed principle of law that accomplices are the parties to the crime. On the basis of degrees of complicity to the crime, accomplices are divided into perpetrators and accessories. An accessory is one who excites or helps the commission of a crime by the perpetrator. Perpetrator is exclusively the person who in law performs the crime. More precisely, the perpetrator is the person who, being directly struck at by the criminal prohibition, offends against it with the necessary *mens rea* or *negligence*. Thus, accomplices include, while accessories exclude the perpetrator of the crime. However, often they are used as synonymous.

As per the notification the killers' identity is to be found. We discussed the meaning of "secret". In para 7 of the Introductory Part 1. Identification of the killers has to proceed on the basis of investigation and evidence. wherefrom, as submitted by Dr. Y.K. Phukan and Mr. P.K. Musahari, two shortcomings appear from records, namely, that only routine investigation proceeded.; modern methods were not used; police dogs were not engaged. to sniff out the

culprits; foot or finger prints were not taken. Investigation was perfunctory, as important evidence were not taken promptly or not at all. For instance, no statement of the informant Ramu Upadhyaya was recorded and the red coloured Yamaha, alleged to have been used by the killers, was not even identified. The weapon was not seized as the killers were not identified. As none was arrested, no Test Identification parade could be held. Lakhimi Deka p.w. 2 and Gangadhar Doley P.W. 4 saw and described the killers, yet, there being no enthusiasm in the investigation, nothing effective was done.

The report of Md. Tafazul Hussain to the S.P. Dibrugarh dated 23.9.98 described the motor cycle used by the assailants to have been 'red-coloured Yamaha'. The first police investigation report dated 4.12.99 was of Shri Budhin Gogoi, Inspector, His instructions were to: (i) examine some close associates of the victim, (ii) to engage sources to trace out the murderers, and (iii) to submit up-to-date C.D.s thereafter. The second such report was dated 4.4, 2002 by the succeeding O.C. The C.D. shows that police examined one SULFA Nayan Das on 12.8.98 u/s. 161 Cr.P.C who said that he was using an unregistered Yamaha motor cycle, having no number. But he was not asked about its colour. Neither he was arrested nor his motor cycle seized. The DTO examined in this case stated that for a new vehicle, after registration is applied for, and its receipt, the vehicle may be used without registration number. Even so, further pursuing of the matter was, perhaps, called for. However, an article published in "Sambhar" entitled "The People are to protect the Journalists", published on 26th February 2005, says that Nayan Das died in 2001-2002 at Dibrugarh. Nothing, however, was in evidence of the case. The I.O. examined some co-employees of the victim in ASTC, but it is recorded that none could give any clue to the killing. There seemed to have been some idea of SULFA-ULFA enmity which also led to no clue, records say. So also the successor I/C Roheswar Das in his report to S.P. dated 14.10.2001 mentioned a "red colour Yamaha", without mentioning any Registration number". G.W. 4 Prabhat Gogoi deposed before the Commission that the investigation was still on. G.W. 5 Rajen Gohain, successor to Roheswar, sent the material exhibits for forensic examination only in August 2001; and there was no clue till then. He (G.W. 5) examined Lakhimi Deka u/s. 161 Cr.P.C. in 2000 only after Hon'ble Meera Sarma Commission was constituted. G.W. 7 also deposed that there was no substantial result in the case.

Shri S.N. Singh I.P.S., S.P. Dibrugarh, in his Affidavit dated 30.9.2003, submitted to the earlier Commission, found in records, said that the matter was still under investigation and "no clue about any enmity" was found that far. This seemed to have suited the popular nomenclature of the subject, namely, "secret killings." The way in which the SULFA camp by the side of the Rudali path has been kept out of investigation, despite SULFA Nayan Das having stated to police that he was using a Yamaha motor cycle without registration number, creates a reasonable doubt as to whether the Police, as in other cases under enquiry, must have known the culprits and therefore, did not follow the correct and immediate lead for investigation resulting in dismal failure and ultimately fizzling out.

P.W. 4 Shri Gangadhar Doley, the then Superintendent of Chowkidinghee bus station deposed also to the effect that months before his death Dimba Rajkonwar told the witness that he would not like to stay at Dibrugarh as constant calls were received by him asking him to persuade ULFA Chairman Arabinda Rajkhowa to come to peace talks and that he would be given Cabinet rank by Govt., if he succeeded. Mr. P.K. Mahanta in evidence denied it saying: "This was completely false, and was meant to politically malign me and my Govt. On the other hand on our part we requested the literary organizations like Assam Sahitya Sabha, Bodo Sahitya Sabha, The Missing Sahitya Sabha and the All Assam Freedom Fighter's Associations and such other Associations as to try to persuade the ULFA members to come to the negotiations table and enter into peace talks. It is not correct that Shri Dimba Rajkonwar

was individually requested as has been said.” Only God alone may know whether such request was or was not made by the then Chief and Home Minister of Assam. On the other hand this reply statement of Mr. Mahanta does not foreclose those who read the press appeals for persuading ULFAs to return to peace talks, to try to persuade Dimba Rajkonwar for the same giving some hope. In that sense the defence statement might be one of admission rather than denial. To this it may also be mentioned that in cross examination of Shri Ajay Rajkonwar by Mr. S.C. Khound, the learned counsel for Mr. Mahanta, Shri Ajay Rajkonwar also stated that after Dimba Rajkonwar’s death, the S.P. Sibsagar, Mr.P.K. Lohia, called Shri Ajay Rajkonwar to his chamber and told that the then Chief Minister (P.K.Mahanta) asked him (D.C. Lohia) to request him (Ajay Rajkonwar) to persuade Arabainds Rajkhowa to come to peace talks and he (Ajay) expressed his inability to do so. The learned counsel Mr. Khound could not refute the statement. When all the aforesaid organizations of the State were assigned the task of appealing, all the family members of the ULFAs must have had tough times in this respect.

This case possesses most of the common characteristics enumerated in para 13 of Part 1. It involved an ULFA family, namely, that of ULFA chairman Shri Arabinda Rajkhowa, Dimba Rajkonwar having been his eldest brother. Its investigation was waylaid by the so called statement of Ramu Upadhyay, that the assailants fled towards Amolapaty, diverting attention from the Rudali path SULFA camp; and evidence showed that police knew, and even visited that camp now and then, where some SULFAs used to stay. The investigation led to no clue, the report being ‘case is true, but there was no clue’. The material exhibits were sent for forensic/ballistic examination unduly late, and, in fact, only at the instance of this Commission the report was collected as late as in 2006. The weapon used was of prohibited bore being .32,&.38 rifled bored Mauser or Tokerev. Pistol, these being associated with only police-military situations. The Commission was told that Assam police do not use Mauser pistols. Ascertainment of the types and calibres of arms and ammunitions used in commission of the crime may also lead to some clue. Material exhibits were sent for forensic/ ballistic experts.

By “prohibited”bores we mean bores prohibited by the Arms act. Section 7 of the Arms Act, 1959 provides for prohibition of acquisition or possession or of manufacture or sale of prohibited arms or of prohibited ammunitions. It was known to Dibrugarh police,

✓ No ex-gratia /compensatory payment was made to the victim’s family. None from the Govt. side attended the two separate Sraddha ceremonies of the deceased, no condolences sent.

A source engaged by police reported that one Raju phukan was moving about on a red Yamaha motor cycle round about the place of occurrence. Raju Phukan was examined and his statement recorded, but it was only after his death he was suspected by police. This posthumous suspicion itself was somewhat suspicious. This observation should not be taken as a criticism

Dimba Rajkonwar was arrested on different occasions including one under TADA in 1992 in Dibrugarh P.S. case No. 575/90 u/s. 3(4) of TADA (P) Act. and Lahoal P.S. case No. 91/90 under the same sections. He was released on bail on 1.8.92. Since then he was on bail. His wife Smti Bharati Rajkonwari filed a Writ petition Civil Rule No. 1327/94 praying for protection and security of her husband Dimba Rajkonwar. Tada Court granted bail to Dimba for three months till 30.6.94. and he went to Delhi for treatment. During this period 8 boys, some of them masking their faces with black cloth, came to Dimba’s P.W.D. quarter and enquired his whereabouts, and not finding him, went to the house of Dinesh Barua, brother of Paresh Barua ULFA C-in-C, and the next morning the deadbody of Dinesh was found dumped on the roadside. In the aforesaid writ petition Bharati prayed for protection and security of her husband Dimba Rajkonwar.

Gauhati Hig Court observed that the apprehension of the petitioner "that after the return of the petitioner's husband shri Dimba Rajkonwar he may be subjected to torture and arrest by the army and police personnel again. Needless to say that life and security is in the hands of the State and it is the bounden duty of the State to secure the safety and liberty since the petitioner's husband Mr. Dimba Rajkonwar has been arrested in connection with regular case and a proceeding is pending before the learned designated court in Assam under appropriate section of law, there would be no necessity of arresting of Mr. Dimba Rajkomwar again, if not otherwise he is wanted in any other case. In this view of the matter I dispose of this writ petition with a direction to the army and police personnel not to re-arrest and harass Shri Dimba Rajkonwar in connection with the offence under which he is being charge sheeted.' There was also a direction to army and police personnel not to harass his two sons and the daughter."

In this case the final act of killing was the culmination of a long drawn course of action beginning with the Government's and its agencies' appeal to the members of ULFA families to persuade their ULFA members to give up path of violence, come for peace talks and join the main stream, introduction of the Unified Command Structure and the army, the CRPF and police and ultimately failing to achieve the desired result, and using SULFAs at the execution end, and ultimately centrally planning and remote orchestrated Ulfocide, viz., to deliberately and secretly kill ULFAs and their families and relatives This has been the course of action in these cases under inquiry and those referred to at the hearing..

G.W No. 3 Shri K.C.Deka who was S.P. Dibrugarh at that time deposed:

"The police force must be sincere, dedicated and hardworking to prevent such occurrences. However, the political force sometimes interferes with the work of the police"

This statement of political interference with the police functions assume significance in this case wherein police failed to find any clue, locate and apprehend the culprit and bring them to justice. This amounts to annihilation of all the fundamental, constitutional, legal and human rights of all those who fell victims to the corruption of the Executive process.

The image of the armed forces of the Union was visible throughout the evidence. Armymen repeatedly requested Dimba Rajkonwar to persuade his youngest brother ULFA Chairman Sri Arabinda Rajkhowa to surrender and come to peace talks and also expressed that the consequences of failure to do so would not be good for the family; and when this actually came true, the accusing finger naturally was towards the forewarners None can impute any evil motive in so counselling, but certainly one will, if the forewarners are found in the criminal steps towards the same end. Army has not been found to have been present at the post-advisory stages of the course of action. The statement of the Chairman of the Strategy group former Chief Secretary Assam, Shri Pranab Bora to the effect that the Unified Headquarters and the Strategy Group were not involved in the killings of ULFAs has not been challenged in cross examination.

In his affidavit the then Chief and Home Minister Shri P.K.Mahanta further said:

"On the date of occurrence i.e, on 11.8, 98. I was the Chief Minister of Assam and to my knowledge, no Government officer nor any Minister of my Ministry were involved in the killing of Dimba Rajkonwar." In Para 3 of his afficavit he said: "That I also deny that the killing of Dimba Rajkonwar was engineered by the highest echelons of the administration as believed by Shri Ajay Rajkonwar as stated by him in his evidence" In Para 5: "That I also deny that Mr. K.P.S. Gill, former DGP of Punjab advised the Govt. during my tenure as Chief Minister, to pressurize the members of the families from which some members had joined the ULFA. That I did not pressurize or direct Shri Ajay Rajkonwar to pressurize Shri Arabinda Rajkhowa, the Chief of U:LFA, to come to the table for peace talk. But I made general appeal to the ULFA leaders to leave the path of violence and to come to the table for peace talks and

in this respect I also wanted help of different organizations including Asom Sahitya Sabha. That the belief of Shri Ajay Rajkonwar as stated in his evidence, that his brother Dimba Rajkonwar was killed for reasons that he (Shri Dimba Rajkonwar) failed to pressurize his brother Arabinda Rajkhowa to bring to the table for peace talks is an absurd belief. That I also deny that the killing of Dimba Rajkonwar was engineered one to create an atmosphere of terror and fear psychosis and that the State made the alleged conspiracy to annihilate members of the families of ULFA as stated by Shri Ajay Rajkonwar in his evidence. That my Govt. did not do anything which creates an atmosphere of terror and fear psychosis throughout the State. That I also deny that SULFAs were directly involved with the help of Govt. in the killing of the brother of Shri Ajay Rajkonwar and I have not read or found any such statement made by SULFAs that "they" (SULFAs) would no longer co-operate with the Govt. in such activities" as stated by Shri Ajay Rajkonwar in his evidence."

The Chief Minister Prafulla Kumar Mahanta was also stated to have requested Dimba Rajkonwar to the same effect. While Prafulla Kumar Mahanta in his evidence said that "the suspicion of Sri Ajay Rajkonwar as stated in his evidence to the effect that in connection with killing of his elder brother Dimba Rajkonwar a section of Government officers and a Minister of the then Govt. were involved is not true"; and that he was the Chief Minister of Assam and to his knowledge, no Govt. officer nor any Minister of his Ministry were involved in the killing. Mr. Mahanta went on to say:

In para 5 Mahanta denied that SULFAs were directly involved in killing of Dimba Rajkonwar. In Para 6 he stated: "I took utmost care to provide protection of life and personal liberty of the people of the State and there cannot be any question of making conspiracy by any elected Government to annihilate the members of the family of ULFA members. My Government was not connected or involved in killing of Dimba Rajkonwar or any such killing of similar nature." Repeating this in para 7 he said: "That I and my then Government was in no way connected or involved with the killing of Dimna Rajkonwar or any other killing of similar nature, and had I or my then Government was involved in such killing, my Government would not have constituted the Hon'ble Justice Haque Commission of enquiry to enquire into those killings"; and that Sri Ajay Rajkonwar's belief to that effect was "not based on fact and is imaginary only and after thought and politically motivated just to malign me and my then Ministry and to tarnish my public image."

Coming from the then Chief and Home Minister of Assam, as these are, these statements on oath deserve respectful consideration. The fact, however, is that that Govt has not been in power and the then Ministers are not there with Mahanta, and there is no statement that erstwhile Ministers and Govt officers held any meeting to discuss the notice issued to Mr. Mahanta u/s 8B. of the Act. As was evident from his depositions Mr. Mahanta has forgotten even vital informations relating to his Government and Ministry. The question, therefore, is how could he affirm an affidavit with such sweeping and all-embracing denials for himself, his Ministers, the Govt. officers and even the SULFAs? This shows that he was also the person who could speak for the SULFAs of that time. The affidavit deserves to be tested on those bases, and when so done, it is not very credible.✓

It was clear from his deposition that Mr. Mahanta knew the two SULFA leaders of Dibrugarh, namely, Shri Jugal kishore Mahanta and Shri Saurabh Gocoi, but he said that neither of them met him. He also personally knew SULFAs Sunil Math and Sailen Dutta Konwar. He has filed affidavit for the two SULFAs, namely, Shri Raju Phukan and Shri Nayan Das who were suspected to have been involved in Dimba Rajkonwar's killing. saying that no SULFAs were involved in that killing. This is in agreement with the failure of the then Dibrugarh police who could not find any clue and the case is still pending. He knew about Usha court of Gauhati which was once attacked with rocket lunched grenades. but said that

police reported nothing objectionable. Mahanta denied the suggestion that there was a design and purpose behind all the secret killings between 1998 and 2001 and that he knew the culprits thereof, but deliberately did not divulge the names before the Commission. He also denied the suggestion that having failed to persuade the ULFAs to come to peace talks, his Government targeted the ULFA families.

Mr. Prafulla Kumar Mahanta, however, admitted that he got such requests to ULFAs to give up path of violence made by the literary organizations of Assam through press appeals. The evidence shows that army was present at the Lakowa residence of Shri Arabinda Rajkhowa's father Shri Uma Rajkonwar who was an esteemed freedom fighter of Assam; and the army tortured a boy in his (Uma Rajkonwar's) living room itself and next morning the boy's deadbody was found at Patsaku, a little distance away therefrom. The polish-SULFA nexus was in evidence, the investigation being way-laid on the basis of the statement of Ramu Upadhyay, a person of rather shady character, and the inability to find any clue and ultimately investigation fizzling out. There was also undue delay in sending the material exhibits recovered from the place of occurrence for forensic/ ballistic examination. The eight boys who came to Dibrugarh PWD quarter of Dimba Rajkonwar in 1994 and enquired his whereabouts, fortunately he was away in Delhi, could reasonably be suspected to have been agents, and their action having formed part of the series of actions culminating in the killing of Dimba Rajkonwar in 1998. The suspicion of police- SULFA nexus gets some corroboration even from Mr. Mahanta's affidavit, as he defends the SULFAs stoutly, from the facts that though the SULFA camp was by the side of Rudali path, almost next door to Chowkidinghee ASTC bus station, and the Police often visited the place and maintained contact with its inmates, the SULFAs were never suspected and/or interrogated. Not even after Nayan Das intimated Police that he was riding one Yamaha motor cycle, new and without any number plate. Evidence also showed that one Raju Phukan was suspected to have been a culprit, but that too was posthumously. Nayan Das also was known to have died without being accused. There was interference with the electricity immediately after the killing enabling the culprits to escape unidentified. The light went off for some time, as if only to allow the killers to escape. The electricity distribution centre did not show any load-shedding or power cut at the appropriate time, but could not record any local interruptions.

The then Chief and Home Minister in course of cross examination also clearly said that no violation of any provision of the Armed Forces Special Powers Act, 1958, in Assam, was brought to his notice as Home Minister of Assam. Mahanta said that under the Armed Forces Special Powers Act, the State Govt has nothing to do. During his tenure as Chief Minister, many people were killed by the Army and their bodies were handed over to Police. Was he aware of them? He ought to know that a citizen's life and liberty are his fundamental, constitutional and human rights protected even by the public international law. The Chief Minister ought to know the real position in law, namely, that the army has been deployed in Assam in aid of civil power of the State, and that in aid does not mean that the civil power does not continue to exist; and that the Unified Command Structure did not usher in military rule in the State, or that a citizen could not be killed except by by authority of law, or that there should always be a Magistrate in whose presence and by whose order operations may be carried on so that the Magistrate alone can pass order to fire and that there are different stages of firing, such as firing to scare, firing to capture and firing to kill. He did not remember to have been approached in any such case. But was he not concerned as the Chief Minister of the State for the lives and liberties of the people otherwise ?To a question as to under which provision of law the Army is empowered to kill persons in encounter Mahanta replied: "In encounter other persons are killed or the army personnel are killed, it will be a matter of defence for both. It is the law of self- defence that is applicable. But where is the evidence for

judging it whether it was in self defence or not ? In numerous cases there have been reports of innocent cow boys, card-playing boys and innocent village youths have been allegedly killed. If the Chief Minister of the State is not concerned with wanton killing of citizens of the State, God alone can give the verdict. To a question as to on what basis he stated in para 2 of his affidavit that on the date of occurrence viz, 11.8.98 he was the Chief Minister of Assam and to his knowledge no Govt. officers nor any Minister of his Ministry was involved in killing of Dimba Rajkonwar, as he said: "The Govt. in office is to govern the country according to the law and the Govt was not expected to be involved in killing of any of the citizen of the State, on that basis I made the statement." To a question whether he, as Chief Minister initiated any peace talks between the ULFA and the State Govt, he replied: "We tried through the literary organizations to bring these groups like ULFA, NDFB, BLT to peace talks. We also initiated moves to be taken by the Central Government for such talk." Asked was ULFA given any formal invitation for talk from the State Government, he said he welcomed them through the literary organization, Freedom Fighters' organization and also through the media.; and that they were requested orally, and that press conference was held. In para 5 of his affidavit he said that he made a general appeal to ULFA to leave the path of violence and to come to the table for peace talk "and in this respect I also wanted the help of different organizations including Assam Sahitya Sabha." He said that during his predecessor Govt. and during his Govt, some ULFAs had surrendered and he knew some of the SULFAs but he does not remember their names. He did not discuss anything with the Commander 4 Corps, the Chief Secretary, Assam, the Director General of Police, the Governor of Assam and the Union Home Minister about the operational strategy of the Unified Command Structure. To a question "Who was the Governor of Assam during the period from 1998 to 2001 when the secret killings took place" the reply was that it was Lt.General (Retd) Shri S.K.Sinha. He denied the suggestion that the Government patronized and caused the secret killings and deliberately did not take punitive measures against their known culprits. On the other hand Shri Pranab Bora, the then Chief Secretary and Chairman of the Strategy Group of the Unified Command Structure, clearly said that he always apprised the Chief Minister about the day to day problems and working of the Strategy group.

In this case death penalty was imposed on Dimba Rajkonwar by the authority who engaged the perpetrator and their accomplices for his "status offence" In this case the witnesses Bharati Rajkonwari and Ajay Rajkonwar have deposed that Dimba Rajkonwar was killed only because he belonged to ULFA Chief Shri Arabinda Rajkhowa's family. Could belonging to a particular family an offence under criminal law? History of criminal law records one such offence, namely, the "status offence." This was only in a tyrannical stage of the Government in a particular country. How did it come to Assam during the AGP regime during 1998 to 2001 is rather mysterious. This offence has such a dangerous propensity that even God must have been prohibiting it by all means. Reasons are not far to seek. In criminal law the basic doctrine is *Ream linguam ut nisi mens sit rea* There is no guilty man without a guilty mind.. The general effect of criminal law, says Gllanville Williams, is to forbid or enjoin conduct by creating offences of commission or omission.. But the mere f commission of a criminal act (or bringing about the state of affairs that the law forbids against) is not enough to constitute a crime, at any rate in the case of the more serious crimes. These generally require in addition some element of wrongful intent. This element is the *mens rea*; while doing of the forbidden act is the *actus reas*. In some cases law provides for strict liability without fault and in some cases, no-fault liability. But these exceptions do not affect the principle of *mens rea*. Thus, there is need for some conduct on the part of the person to be held liable.

Glanville Williams in his Textbook of Criminal Law discussing offences without conduct writes (p.36). "One might suppose, then, that the requirement of some relevant conduct,

whether by act or culpable omission, would be regarded as the foundation of every criminal charge; and that knowledge of this rule will be part of the elementary learning of the lawyer- *pans asinorum* in every examination for the bar or for the solicitor's profession. As will have been gathered, the assumption would be wrong. Partly because of some of the wording of the legislation and partly because of the failure of the courts to develop a liberal principle of interpretation, an offence can be committed without any act or culpable omission at all. The offences of this type have been aptly called 'status offences'; they are committed by people who simply find themselves with a particular label. (It is perhaps not without significance that status offences commended themselves particularly to tyrannical regimes; the criminal code of Stalin's Russia abounded with them, as for example, the offence of being a relative of an enemy of the people.)"

The question no doubt arises as to how the then AGP regime could expect to derive any benefit out of such heinous crimes?. However, as Machiavellie wrote in Chapter 8 of his "Prince", the story of the Prince who tried to thrive by villainy and treachery against all those who earlier helped him into power, exterminating them and thereby consolidating his own position.

"The Chief Minister also once sent for me and directed me to pressurize my younger brother Arabinda Rajkhowa, the Chairman of ULFA, to come for peace talks. I replied that I had no contact with Arabinda Rajkhowa and it was impossible on my part to pressurize him." Ajay believes that it was one of the reasons for which his elder brother Dimba Rajkonwar was killed.

Shri G.M. Srivastava, the then I.G.P.(Operations) Assam, in reply to a question in cross examination said:

Q.47. If in a concrete instance, a member of the family was requested to bring their member of the family in the ULFA, or similar organization, to the main stream and they fail to bring them back, they were also arrested and detained under TADA and allegedly tortured, and sometime thereafter, it so happened, that the very member of the family has been killed in a way that it is not possible to know who were the killers, what would be your normal conclusion in such a matter?

Ans. Naturally a suspicion will arise."

In commission of the crime of killing the *socii vel auxiliores*, the actual killer is the perpetrator, and his accessories are the accomplices- "*socii vel auxiliores criminis*" of the Civilians. In the instant case, the needle of suspicion pointed towards the SULFA Raju Phukan who has since died, and SULFA Nayan Das, who owned a like Yamaha motor cycle suspected to have been used in killing Dimba Rajkonwar is also reported to have died later.

The impression at the hearing on 27th and 28th Dec. 2005 were : (1) The investigation was of conventional and local nature. It never covered any area or place outside Dibrugarh district. Neither foot or finger prints; nor any use of police dog squad to sniff out the culprits were on record. The police witnesses could not rule out the possibility of someone coming from North Lakhimpur, Dhemaji or Sonaighat of the other bank of the Brahmaputra, committing the crime and retreating without being detected. During August the Brahmaputra is full, and 'chaparries' yet to emerge, so that it could be crossed by steamers within 5/6 hours. (2) There appeared to have been some attempt at window-dressing in respect of location, apprehension and interrogation of persons soon after the shooting. Appreciation of its contemporary ramifications was not manifest. Case diary shows that One Raju Phukan in his statement u/s.161 Cr. P.C., admitted to have been using one red Yamaha motor cycle, but police did not suspect and seize it. However, he was posthumously suspected after he was killed by army on 27.8.98 i.e., after 16 days of this incident. In a subsequent case the Commission was told that even Krishna Hazarika who was reported to have been in the North Lakhimpur group, was

also killed, as if the rule was 'to kill and get killed' There appeared to have been some discrepancy as to whether the assailants covered their faces by black cloths or were wearing helmets. As none could recognize the assailants, this was not material. There was also discrepancy of about 15 minutes as to the time of the incident which also was natural but not material. About light at the time of killing, witnesses agreed that there was electric light burning inside the adjacent rooms of ASTC office and the workshop so that everyone from the rooms and the workshop could see the assailants, the shooting and the shooter jumping back to his pillion, turning back and fleeing away, but then suddenly the lights went off as if to help them escape. Light was restored at about 7 P.M. and continued. The long book was called from the Dibrugarh Electricity Board office which did not record the black out minutes after the killing. However the expert from that Board station said that purely local and momentary interferences would not be communicated or recorded in the long book, Therefore the short time local switching off could not be ruled out.

Two hypotheses would emerge out of investigation. First, conventional police investigation proceeded on basis of someone from the area, without suspecting the inmates of the SULFA camp located at Rodali path (which was said to have started from the Chowkidinghee Bus station and lead to railway colony).over which camp the Dibrugarh police used to keep an eye.. One Raju Phukan was posthumously suspected. In his statement u/s.161 he admitted to have been using one red Yamaha motor cycle, but police did not suspect him or seize his motor cycle. Another person named Nayan Das was also said to have owned one new Yamaha motor cycle. But he was not suspected. He also is said to have died later.

The other hypothesis to be tested was on the basis of a news item in Assamese daily *Agradut* dated 25th August 2005. published from Guwahati in lower Assam and Jorhat in Upper Assam; under the banner headline

'On pressure from legislators Mahanta had to remove 14 member squad from Lakhimpur hotel: The operation of secret killers on direction from Dispur'

The vivid details written were that the squad was under Krishna Hazarika and Papul Saikia; and that it crossed over to Dibrugarh where several secret killings occurred. But Sri Prafulla Kumar Mahanta denied the truth of the news and questioned why was it not published when he was the Chief Minister and is published after six years when he is out of office. Asked whether he sent any contradiction to it to press he replied that he did, but the same was not published by the newspaper concerned. He has since furnished the Commission a copy of the same, and the paper is being asked about its receipt or otherwise by them. No reply is received from it.

As regards admissibility of news items in evidence, in the case of interview with the author of the book "Tamas" news item in *Hindustan times* of 1st Feb. 1988, such evidence is not admissible. However, the matter being of public interest, it was looked into. Similarly, this news item is not admissible, but being of great public interest it is looked into and recorded as a fact. (Ramesh, son of Chutalal V. UOI, (1988) 1 SCC 361; AIR 1988 SC. 775.) That there was such a news item is a fact, and its truth or otherwise was being tested. as a hypothesis. As no reply was received from the newspaper, the news item, as such, may not be acted upon. However, as it relates to a matter of great public interest, the Commission looked for corroboration, and asked some of the witnesses their views on it. It was also considered that the news item was published on 25th August 2005 though the subject matter was of last quarter of 1998. It was considered that the Notification appointing this Commission was issued on 22.8.2005 and this news item published on 25.8.2005. But this was the time when the entire State was interested in doing justice to victims of secret killings. Yet, it was pointed out by the learned counsel that there was not even a whisper by way of its contradiction, even though several persons were named in the news item. The I.O did not have this news item

during investigation and, therefore, no fault could be found with him. The Commission has called for the case diary wherefrom the course of the police mind in investigation is available. No investigation is known to have proceeded in this line. Some of the departmental witnesses were asked whether what was stated in the news item could be possible, the reply was that it could not be ruled out. Looking for corroborative materials it was informed that, in fact, there were more than one incidents of secret killing immediately prior to the Dimba Rajkomwar's killing in and around Dibrugarh which is on the south bank of the Brahmaputra (Lakhimpur being on the north bank). P.W.3 Ajay Rajkonwar stated that immediately on the eve of Dimba killing one ULFA member Munna Mishra's brother was killed similarly at Duliajan near Tinsukia. P.W. 2 Mrs Lakhimi Deka deposed that on 12.8.98 another similar incident took place at Barpathar near Dibrugarh University where one Gogoi was secretly killed. P.W. 3 Ajay Rajkonwar deposed that one member of this Gogoi's family was a member of ULFA. These incidents were in corroboration of the news item. In cross examination Mr. Prafulla Kumar Mahanta was asked:

Q. Did you come across the news item published in the Dainik Agradoot in its issue dated 25th August 2005? Mr. Mahanta replied:

A. "I saw the news item. The allegations made therein are not correct. Moreover, if anything happened that should have been published during my regime as Chief Minister. There is no reason why it should be published long after I ceased to be the Chief Minister."

Q "Did you give any contradiction to the news item?"

A. I sent a contradiction but the paper has not published it.

Q. Could you please give a copy of your contradiction?

A. Yes. If called for the Commission. It would be submitted within a week."

A copy of the "contradiction" sent to the Newspaper has been furnished, but the same does not contain any request for publishing it as contradiction. No publication of the contradiction has been shown to us. The news item is still uncontradicted in press, Mr. P.K. Mahanta states that in another Assamese daily "Ajir Batori" in its 27.7.2002 issue, published from Guwahati published an item captioned "-Mahanta was involved in secret killing" and against that he petitioned to the Press Council of India, ex parte, the respondent having failed to appear, passed order against the respondent. However, that was a different matter. In this case, as nothing was heard from the esteemed news paper, the Commission may not act upon it.

✓ **(C) Whether there was any conspiracy in targeting the victim and the motive behind such killing.**

This term is replied in two parts, namely, conspiracy in targeting, and motive for killing.

I. Conspiracy in targeting the victim. Conspiracy, in the context of the instant inquiry, will mean criminal conspiracy as defined in Section 126A of IPC as follows:-

"when two or more persons agree to do or cause to be done :-

(1) An illegal Act, or

(2) An act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.- It is immaterial whether the material Act is the ultimate object of such agreement or is merely incidental to that object..

Abetment of a thing. As defined in Section 107 of the Indian Penal Code (IPC)

"A person abets the doing of a thing, who-

First- instigates any person to do that thing; or

Secondly- engages with one or more other person or person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly, institutionally aids, by any act or illegal omission, the doing of that thing.

Explanation -1. A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.; or (Illustration omitted).....

Explanation -2 Whoever either prior to or at the time of commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act”.

The law and jurisprudence of conspiracy has been discussed in para 10 of the Introductory part of this report; the same is referred to...The question whether there was any conspiracy or not in the killing of Dimba Rajkonwar has to be decided on the basis of the law, and facts in evidence on record. In case the answer is in the affirmative, then also the question will be as to who were the conspirators ?. It is in evidence that Dimba Rajkonwar was requested by various agencies to persuade his younger brother Shri Arabinda Rajkhowa, who has been the Chairman of ULFA, and was forewarned by the army, that if Arabinda Rajkhowa could not be persuaded, by him, to join the peace talks and bring peace, the consequences would not be good for the family. Earlier in 1994, some unknown persons came to his quarter and enquired of his whereabouts, most probably to kill him, as some other person whose whereabouts could be collected at that time were secretly killed, and lot of troubles were created at the residence of their father at Lakowa, and the fact that two persons participated in the act of actual killing on the fateful evening, there can be no other answer than that there was criminal conspiracy in the killing. P.W. 1 widow Smti Bharati Rajkonwari stated that as far back as in 1994 some youths came to their residence and enquired the whereabouts of Dimba Rajkonwar who was then in Delhi for treatment. Some similar boys came to another family and took the whereabouts and next morning the person was reported killed. The 1994 query has, therefore, to be treated as part of the course of action; and the very killing of Dimba, therefore, be indicative of the forwarners having been a part of the conspiracy. The then Chief Minister himself persuaded the members of Dimba's family in that line. The Lakhimpur squad was reported to have been moved from North Lakhimpur to Dibrugarh by the then Chief Minister, who has, of course denied it before the Commission, but he revealed that he requested the literary organizations to persuade the ULFAs to surrender and come to the main stream. Someone or more from those were likely to try to persuade Dimba Rajkonwar to the same effect. There is evidence to show that the SULFA camp was in touch with the police. Indeed the police- SULFA nexus has been submitted in arguments by the learned counsel for the Commission, the Government, and the parties. This means that the SULFA emerged as an extra-constitutional authority. In case the SULFA were such a body of persons and were used by police either as an auxiliary, or as the striking arm, they would also be part of the conspiracy. . We have already discussed that as conspiracies are often hatched in secrecy, these circumstantial evidence, will be relevant and admissible. In the killing of Dimba there were two persons in the act of shooting. But there was a course of conduct involving the deciders of the course of action culminating in the killing. Considering the facts of this case in light of definition of conspiracy, it can surely be held that there was a long drawn course of action amounting to conspiracy. The manner of planning and execution of the act of killing shows that there must also have been some authoritative assurance of safety to the killers after the act was completed. Therefore, there was conspiracy in this case.

Questioned on the two cases, namely, that of killing of Dimba Rajkonwar and that of Dr. Dharanidhar Das and family, Shri G.M. Sroavastava, then I.G.P.(Operations) said (A., 88): “Normally police compares the cases on the basis of modus operandi and circumstances. In this

case I have not seen the case diary nor I have seen the statements. But the reason and motive behind the killings may come out only after thorough investigation of the situation and examining in detail every aspect and possibilities by investigation officers and the officers of supervisory level."

II. Motive. Behind the killing may be analysed as direct or immediate; and the ultimate. Regarding the ultimate motive, there is evidence of P.Ws. Bharati Rajkonwari who, in para 15 of her affidavit stated: "That my husband is murdered only because he is the elder brother of ULFA Chairman Arabinda Rajkhowa, though my husband and other members of our family have no link with the ULFA Chairman or the outfit organization.", and Ajay Rajkonwar, elder brother of Arabinds Rajkhowa, in para 7 stated: "That my elder brother had no connection with ULFA outfits. He was a wellknown social worker. I think his murder is engineered one, to create an atmosphere of Terror and fear psychosis." In para 10 he stated: "I think as Dinba Rajkonwar is the elder brother of ULFA Chairman Arabinda Rajkhowa his case is not considered even though his family members did not and do not entertain the ideas of ULFA outfit."

Any judicious finding as to the motive of killing of Dimba Rajkonwar has to be based on an analysis of the events in his lifetime vis-à-vis the ULFA, whereof his younger brother Shri Arabinda Rajkhowa was the Chairman, all other hypotheses of his (Dimba's) having enemies, and of his any antagonizing activities having been rejected in course of investigation of the case. Some of such events that happened in his parental home at Lakowa have also to be analysed. In course of such an analysis we find instances of Dimba Rajkonwar being requested by various Govt. and private agencies requesting the patriarch Shri Uma Rajkonwar and his sons Dimba and Ajay to try to persuade Arabinda to give up the path of violence and come to peace talk. Though the then Chief and Home Minister denied having done so personally, he admitted to have caused requesting press statement to be made by literary and other agencies. Army and police also joined the persuasive exercise. So far nothing could be held under objection. But, then followed the pressurization exercise. Persons not in any way connected with the family were brought to the family home at Lakowa and tortured within the premises creating scenes; and the dead body of one of the tortured boys was found next morning at Patsaku not very far from the family house. Dimba Rajkonwar was arrested under TADA and was cautioned that consequences of failure to persuade Arabinda to come to peace talks would not be good. All along the family members were saying that they had no contact with Arabinda and had no means of communicating with him. This perhaps ought to have satisfied the pressurizing agencies to live the members of the family alone in peace. Then came the event of 18.2.1994 when some young persons came to the P.W.D quarter of Dimba Rajkonwar between 9 and 10 P.M. and asked his whereabouts. Fortunately Dimba was then under treatment at Delhi. The purpose of the young persons' coming was clear when it was learnt that a similar group went also to the house of Shri Dinesh Barua, brother of ULFA C-in -C Shri Paresh Barua; and on 19.2.94 came the news that the said Dinesh Barua was murdered.

Thus, there could be no reason other than that Dimba Rajkonwar was the eldest brother of ULFA Chairman Arabinda Rajkhowa and as such belonged to the same family; and that the killing would avenge ULFA and weaken its chairman's spirit. Ajay Rajkonwar also guessed that it was on the advice of an eminent personality of India, but that personality experienced in that line clearly and emphatically denied it.

The Commission makes it clear that Sri K.P.S Gill, former D.G.P. of Punjab and Chairman of Indian Hockey Federation in his affidavit sent pursuant to this Commission's notice to him under section 8B of the Act has clearly denied having any talk with anyone in Assam or having given any advice as alleged. The fact that there was a request made to the literary

organizations and Sahitya Sabhas of the State to persuade the ULFAs to surrender is in deposition of the then Chief Minister Mahanta. A course of conduct by different agencies towards similar persuasuin and the forewarning that in case of failure to effect surrender consequences would not be good for the family, and thereafter arrefresting Dimba Rajkonwar under TADA and arresting, detaining and torturing him, so muich so that his wife had to more the High Court and obtain an order not to torture him and other members of his family and finally culminating in his killing support such a conclusion. Contemporary similar killings brought in evidence of this case also showed that it was the consistent pattern to follow. One may question why, in face of the constitutional and legal right for every sitizen to freedom of thought and belief, freedom of association, the relatives need be pressurized to bring them back to peace talks, and why relatives who failed to do so should be arrested and tortured under IADA, and when even then they failed, they should be secretly killed ? The way in which and with which they have been killed leavesx no doubt that the killers enjoyed complete immunity for their acts of killinf, The way in which in all the cases the investigations were made to fizzle out shows that the police is in collaboration with them. All these also prove that the entire scheme is being remorte orchestrated. Those in helm of those deparments must be held accountable and need be brought to justice. The matter being of criminal nature proof must be beyond reasonable doubt. The series of cases with common characteristics lead to such a conclusion beyond reasonable doubt. .

The immediate motive of the killers could be any reward or satisfaction emanating from those who harboured the ultimate motive and engaged the killers. The desire of a consequence is the motive for an action, Intention and motive are often used synonymously. In criminal law the question of motive is not material where there is direct evidence of the acts of the accused and the acts themselves are sufficient to disclose the intention of the actor. In such cases while. motive is immaterial, intention is material.. In the Explanation to section 161 IPC "a motive or reward for doing is illustrated as - a person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done. In this sense, motive of the killing will mean that for which the killer has committed the killing, and without which he would not have done it. We have to ascertain from the circumstances, anterior, present and posterior to the incident.of killing., The anterior circumstances were that Dimba Rajkonwar was one of the sons of eminent freedom fighter Uma Rajkonwar of Lakwa (since deceased) whose youngest son Arabinda Rajkhowa happened to be the Chairman of the banned outfit ULFA There had been constant efforts in Assam to solve the insurgency problem created by ULFA and similar outfits in the region. Use of force attained limited success Some of the extremists have left the country and have taken shelter in foreign countries.Their whereabouts being not known to the anti-insurgency authorities. One possible way was to request the members of the foreign sheltered leaders of the banned outfits and request them to exercise their relationship influence to give up the path of insurgency and come to the normal stream in the country. None could find any fault in such efforts. That such a move was there in case of Uma Rajkonwar's family is evident in this case. Dimba Raj konwar's widow Bharati Rajkonwari said that the former was the eldest brother of ULFA Chairman Arabinda Rajkhowa It is evident that eminent lesders of Assam, including two Chief Ministers of Assam met him and discussed about terrorism in Assam. However, if undue influence, coercion, or violence is resorted to, that may be illegal, punishable and violative of fundamental and human rights In this regard the prevailing situation may be noticed. Apart from the Maintenance of Internal Security (MISA)/National Security Acts (NASA), the Disturbed Areas Axt, the Assam and Manipur Armed Forces (Special Powers) Act,1958, and the Terrorist and Disruptive Activities Act (TADA) were in force in Assam. The Unified Command Structure was also functioning As his elder brother (Dimba Rajkonwar) was

arrested by the Army in 1992 that time. Shri Ajay Rajkonwar, younger brother of Dimba Rajkonwar (P.W. 3) deposed that in course of interrogation Dimba Rajkonwar was repeatedly told by the Army two things:, namely that should the then ongoing peace talks between the ULFA and the Central Government failed, it would not be good for him (Dimba Rajkonwar). When this was told, by Dimba, his father Uma Rajkonwar, then alive, was very much hurt. In the same line Ajay also deposed that in 1992 the Army arrested a boy named Durgeswar and brought him to Uma Rajkonwar's Lakowa house and tortured him in the very living room of Uma Rajkonwar, and his (Durgeswar's) deadbody was found next morning at Parsasku about 1 k.m away. Ajay deposed: "At that time a news item was widely reported by news papers that K.P.S. Gill, former D.G.P. of Punjab had come to Assam..... It was reported that he advised the Govt. to pressurize the members of those families from which some members had joined the ULFA The Chief Minister (Mahanta) also once sent for me and directed me to pressurize my younger brother Arabinda Rajkhowa, the Chairman of ULFA, to come to the table for peace talks. I replied that I had no contact with Arabinda Rajkhowa and it was impossible on my part to pressurize him. This is one of the reasons for which I believed that my elder brother Dimba Rajkonwar was killed."

Mr. K.P.S Gill in his affidavit clearly denied that he gave any such advice; and the Commission accepts the denial. The record of Ajay's deposition is there only to show that it was his state of mind at the time of his deposition.

Both the members of Dimba Rajkonwar's family, namely, Bharati Rajkonwari and Ajay Rajkonwar stated that Dimba Rajkonwar was killed only because he happened to be the elder brother of Arabinda Rajkhowa, the chief of ULFA. This theory has also been found to be consistent with the other killing cases enquired into by the Commission together with it. Shri Prafulla Kumar Mahanta in his affidavit denied that he did so. In his deposition also Mahanta said so.

✓ Shri Ajay Rajkonwar deposed that he had to run from pillar to post, including an application to the Chief Minister Prafulla Kumar Mahanta, but failed to obtain order for adequate security to the members of their family, and ultimately had to move a writ petition in the Gauhati High Court which graciously ordered security to be provided to the family members. Another instance was that "inspite of the presence of the house guard at our residence, an unidentified deadbody was planted at our doorstep" and inspite of all out efforts, no investigation thereinto resulted. For the foregoing instances, and some more, Bharati Rajkonwari in para 15 of her affidavit stated "That my husband is murdered only because he is the elder brother of ULFA Chairman Arabinda Rajkhowa, though my husband and other members of our family have no link with the ULFA Chairman or the outfit organization." Ajay also deposed that the killing of his elder brother Dimba Rajkonwar was ✓ "engineered by the highest echelons of the administration"

The evidence of Gangadhar Doley (P.W. 4) is corroborative of the above evidence. Answering a question about his relationship with Dimba Rajkonwar he said that it was very cordial since their school days he said:

"One month before the incident he told me confidentially that he did not like to stay in his quarter in the morning and in the evening as he constantly received telephones from the ruling party which requested him to negotiate with the ULFA for peace talk as he was the elder brother of Shri Arabinda Rajkhowa and for doing so he would be given cabinet rank" Asked about it source Dimba replied that it was some source at Govt. level, but did not reveal the source. There is no ground for disbelieving these statements; There is reason for inferring that the source could be one who could confer cabinet rank.

Status Offence. It has been observed by Kenny in his Outline of Criminal Law, under the principles of criminal liability: "The religious doctrine that there must be expiation for sinful

deeds was in accord with rules of criminal law as to punishment; but the religious sanctions, although by no means lenient, were varied to match the degree of moral turpitude which could be detected in the offence, and the spiritual courts were therefore primarily concerned with the mental ingredient with the commission of the offence." (pp. 12-14). It resulted in gradual recognition of a mental element in criminal liability which reinforced the ethical conception that it was not proper to punish a man criminally unless he had knowledge that he was doing wrong. Attention was thus more strongly directed to the mental element in crime, and the moral notion gradually crystallized into a rule of law. It ultimately became the best maxim accepted by St. Augustine had said: *Ream linguam non facit nisi mens rea*. In course of time it became the best known maxim of English criminal law when Coke expressed it *Et actus non facit reum nisi mens sit rea*. In this famous phrase there is a clear distinction between a man's deed (*actus*) and his mental process (*mens*) at the time when he was engaged in the activity which resulted in the deed. This centuries old maxim has two necessary elements in crime, a physical element and a mental element and it makes plain that at common law no man may be found guilty of crime and therefore legally punishable unless in addition to having brought about a harm which the law forbids he had at the time had a legally reprehensible state of mind. It is therefore necessary that the student attempt to reach an understanding of these two constituent parts of criminal responsibility." This ancient doctrine that a man should be held responsible for anything which he could be proved to have done, led naturally to the converse idea that a man could incur no liability if harm resulted as a result of his doing nothing at all. This doctrine has persisted to the present day in so far that no one is held criminally responsible for the harmful consequences of his omission to act whether that omission be careless or intentional, unless the prosecution can prove that he was under a legal obligation to take action in the particular circumstances in which he was placed." (p.14) As Kenny writes: "It seems that with few exceptions no duty under the common law rests upon a person to take action to protect others unless he has directly or indirectly undertakes so to do" It is accordingly accepted that there is no guilty man without a guilty mind. In the instant case the victim Dimba Rajkonwer had no such obligation. Even assuming that coming under the exception "the duty which rests upon every citizen to aid and assist a police officer in the execution of the duty in order to preserve the peace when reasonably called upon, and reasonably able to do so," Dimba Rajkonwar made it clear to police and army that he had no contact with his brother ULFA Chief Shri Arabinda Rajkhowa, and hence there was no question of his being able to persuade Arabinda to return to peace talks. In view of his reasonably being unable to do so, he deserved no punishment, far less capital punishment under law, that too without giving him a reasonable opportunity of being heard. Undoubtedly, Status offence is contrary to all these just canons of law. .

Glanville Williams in his Textbook of Criminal Law, discussing offences without conduct writes (p.36). "One might suppose, then, that the requirement of some relevant conduct, whether by act or culpable omission, would be regarded as the foundation of every criminal charge; and that knowledge of this rule will be part of the elementary learning of the lawyer- *pans asinorum* in every examination for the bar or for the solicitor's profession. As will have been gathered, the assumption would be wrong. partly because of some of the wording of the legislation and partly because of the failure of the courts to develop a liberal principle of interpretation, an offence can be committed without any act or culpable omission at all. The offences of this type have been aptly called status offences; they are committed by people who simply find themselves with a particular label. (It is perhaps not without significance that status offences commended themselves particularly to tyrannical regimes; the criminal code of Stalin's Russia abounded with them, as for example, the offence of being a relative of an enemy of the people.) There is no doubt that Dimba Rajkonwar was capitally punished for

being a member of ULFA Chief Arabinda Rajkhowa's family, by those who wanted him (Dimba) to persuade Arabinda to return to the main stream and join the peace talks. Through whom it was executed is a different matter to be found out.

Mr P. K Bora I.A.S.(Retd) who was the Chairman of the Strategy Group at the State level of the Unified Command Structure stated in para 3 of his affidavit that the United Command was required to synergise counter insurgency operations conducted by Army, Central Police Organizations and State Armed Police Force. It was also to do crisis management and to monitor the proceedings of the District level Co-ordination Committees. He said that as chairman of the Strategy Group he always apprised the Chief Minister of the day to day proceedings of the Group. In para 5 of his affidavit Mr. Bora stated that he presided over a number of meetings of the Strategy Group at the State level and that "These were no way involved in the 'secret killings' and this deponent does not believe that the United Headquarters were involved either. The preoccupation of the Unified Headquarters was to carry out operations against the insurgents and not against any member of their families." This statement was not shaken in evidence.

Collective responsibility. It has two meanings.: the first that of members of a Government are unanimous in support of its policies and exhibit that unanimity on public occasions although while formulating the policies they might have differed in the cabinet meeting.; the second that the ministers who had an opportunity to speak for and against the policies in the cabinet and thereby personally and morally responsible for its success and failure."

By the terms of reference we are to find out the motive of the killing. Witnesses deposed that there could be no other reason for killing of Dimba Rajkonwar except because he was a member of the ULFA chairman Shri Arabinda Rajkhowa's family, being his eldest brother. This is reminiscent of status offences in Stalin's Criminal Code referred to above. It means that Dimba Rajkonwar's offence was his status of a member of ULFA chairman's family, being his eldest brother.

P.W. 4 Shri Gangadhar Doley, Superintendent Chowkidinghee ASTC Bus station deposed: "One month before the incident he (Dimba) told me confidentially that he did not like to stay in his quarter in the morning and in the evening as he constantly received tele[h]one from the ruling party which requested him to negotiate with the ULFA for peace talk as he was the elder brother of Shri Arabinda Rajkhowa and for doing so he would be given cabinet rank"(by some Govt. source.)

The immediate motive of the killers could have been some reward or satisfaction emanating from the person who engage them to perform the killing. The SULFAs appear to have been used as the striking arm; and they would also be part of the conspiracy. . We have already discussed that as conspiracies are often hatched in secrecy, these circumstantial evidence will be relevant and admissible. In the killing of Dimba there were two persons in the act of shooting. But there was a course of conduct involving the deciders of the course of action culminating in the killing. Considering the facts of this case in light of definition of conspiracy it can surely be held that there was a long drawn course of action amounting to conspiracy. The manner of planning and execution of the act of killing shows that there must also have been some authoritative assurance of safety to the killers after the act was completed. Therefore, there was conspiracy in this case..

(D) Pinpointing responsibility on persons involved directly or indirectly in commission of killing

This is the most difficult task of the Commission. In the absence of effective direct evidence, we have to depend on relevant circumstantial evidence. That too is not forthcoming in such extents as could help us in pinpointing responsibility on the persons involved.

Fortunately the term of reference mentions "involved directly or indirectly in commission of killing" This enables us to act on basis of integrated evidence rather than on isolated ones. We have therefore to integrate such parts of evidence as will lead to a conclusion beyond reasonable doubt, for pinpointing responsibility. Besides what are found in relevant pieces of evidence, the common characteristics found in each individual case also throw some light. We have, of course, to follow the general principles of evidence enunciated by the authorities on evidence, in pinpointing the responsibility beyond reasonable doubt in this case.

The best evidence rule. "Phipson on Evidence," 9th ed. P. 51 under caption : "The Best Evidence Rule. Strict Proof" Says: "The maxim that 'the best evidence must be given of which the nature of the case permits.' has often been regarded as expressing the great fundamental principle upon which the law of evidence depends. Although, however, it played a conspicuous part in the early history of the subject, the maxim at the present day affords but little practical guidance. The applicability of the rule depends on the nature of the subject to be proved. In the complicated nature of things today the emphasis has somewhat changed. (P. 53) According to Phipson, 'In the present day, then, it is not true that the best evidence must, or even may, always be given, though its non-production may be matter for comment or affect the weight of that which is produced. All admissible evidence is in general equally receivable. Thus, circumstantial evidence is no longer excluded by direct, and even in criminal cases the *corpus delicti* may generally be established by either species, or, indeed, by the defendant's mere admissions out of Court'.

The Supreme Court says that conspiracies are often hatched in secrecy; and that circumstantial evidence is generally available in such cases. The similarity of the cases in this group of seven cases is therefore is relevant and admissible,

Best on "The Principles of The Law of Evidence." (9th ed) in its Introduction (pp.4-5) said: 6. "With regard to intensity of persuasion, the faculties of the human mind are comprehended in the genera, knowledge and judgment. 1. By "knowledge" strictly speaking, is meant an actual perception of the agreement or disagreement of any of our ideas ; and it is only to such a perception that the term "certainty" is properly applicable. Knowledge is intuitive when this agreement or disagreement is perceived immediately, by comparison of the ideas themselves; demonstrative when it is perceived mediately, i.e, when it is deduced from a comparison each with intervening ideas which has a constant and immutable connection with them, as in the case of mathematical truths of which the mind has taken in the proofs, and lastly through the agency of our senses, we obtain a perception of the existence of external objects, our knowledge is said to be sensitive. But knowledge and certainty are constantly used in a secondary sense, which it is important not to overlook; viz, as synonymous with settled belief or reasonable conviction; as when we say that such a one received stolen goods knowing them to have been stolen or that we are certain or morally certain, of the existence of such a fact etc."

7. 2. "Judgment", "the other faculty of the mind though inferior to knowledge in respect of intensity of persuasion, plays quite as important a part in human speculation and action, and, as connected with jurisprudence, demands our attention even more. It is the faculty by which our minds take ideas to agree or disagree, facts or propositions to be true or false, by the aid of intervening ideas whose connection with them is either not constant and immutable, or is not perceived to be so.. The foundation of this is the probability or likelihood of that agreement or disagreement, of the truth or falsehood, deduced or presumed from its conformity or repugnancy to our knowledge, observation, and experience. Judgement is often based on the testimony vouching their observation or experience but this is clearly a branch of the former, as our belief in such cases rests on a presumption of the accuracy and veracity of the narrators."

The observation , accuracy and veracity of the narrating witnesses are, therefore, important. However, when no less a person than the then Superintendent of Police Shri K.C. Deka has

stated about political interference of the Executive police functioning, one has to be cautious on the appreciation of evidence.

✓ **The following common characteristics of the first group of seven cases** are found in this case while answering its terms of reference so as to justify a finding of a general plan of "Ulfocide" i.e., deliberate killing of ULFAs and their families and relatives, on their basis, namely :

- ✓ 1. That this killing involved an ULFA family, being that of the ULFA Chief Shri Arabinda Rajkhowa, and its investigation is kept pending, but no clue..
2. Unlike in other cases, this killing, of Dimba Rajkonwar, were committed in the evening light, but light was off immediately thereafter, to allow the assailants to escape under darkness.
- 3.. The assailants covered their faces with black wrappers and caps, to avoid being identified.
4. The weapon used in killing was a firearms of prohibited bore being .32/.38 bores generally found in police-military situations
5. The firearms being of prohibited bores, forensic examination of the material exhibits was avoided or unduly delayed. The report was collected long after. Investigation fizzled out..
6. The vehicle used was reportedly a red coloured Yamaha Motor cycle without number plate which was never seized or taken into custody, despite having one answering the description, informed by its owner..
7. There were police patrolling in the crime areas prior and posterior to, but not during the killing.
8. That the army was ubiquitous. There was lurking evidence of Police-SULFA nexus in the killing, some of the latter being constituted into an extra-constitutional authority and used as the executioners. the *modus operandii* being to visit the family, ask members to persuade its ULFA member to surrender, failing which, to send advance team to locate and survey the house, then to send armed and masked persons to shoot /them dead or take them away and kill them secretly and throw the bodies somewhere.. In this case killing was in the evening.
9. There was general resentment and decry against the Unified Command Structure/ Chief Minister..
10. There was connivance of SULFA; and omission to make any SULFA an accused despite clues..
11. The investigation did not commensurate with the seriousness of the crime perpetrated..
12. That modern scientific methods of investigation, finger/foot prints, dog-squads were never used.
13. No condolence message was sent from the Govt. of Assam to the victim family.
14. No ex-gratia/compensatory payment was made or offered by the Govt. of Assam in this case.
- 15 In this case death penalty has been imposed for "status offences," on Dinba Rajkonwar for being a member of ULFA family of the ULFA Chief Shri Arabinda Rajkhowa..
16. From some cases "remote orchestration" and principle of "kill and get killed" are deducible. The remote was supposed to be at Home.

This conclusion is based on the similarities of the seven cases in almost all respects, which could not be so, unless there was remote orchestration from higher authorities. The remote was supposed to have been at Home. The kill and get killed applied to a SULFA leader.

Questioned on the two cases, namely, that of killing of Dimba Rajkonwar and that of Dr. Dharanidhar Das and family, Shri G.M. Sroavastava said (A., 88) Normally police compares the cases on the basis of *modus operandii* and circumstances. In this case I have not seen the case diary nor I have seen the statements. But the reason and motive behind the killings may come out only after thorough investigation of the situation and examining in detail every aspect and possibilities by investigation officers and the officers supervisory level.

Regarding the SULFAs suspected, it may be appropriate to observe that because of the position in which the SULFAs found themselves, between the devil and the deep sea.. their erstwhile colleagues having been deserted by their act of surrender, they deserved adequate protection, But using their services as "guides, "spotters". trouble-shooters and cllaborators in police functions could never be viewed as proper treatment meted out to the SULFAs, far less their being used as the striking arm or the men in charge of execution. Let them now be bereft of the hallowed positions, and give them fair field and no favour, at least following the insolvency principle of allowing the declared insolvent to have a fresh start in life. How the erstwhile affected people will adore or avoid them will be a different matter altogether.

So far as the Government wings, agencies, and authorities, both official and political, the principle of "resposndent superior" will surely apply; and for all the lapses and misdeeds at the lower levels, higher levels authorities shall be held liable and be subjected to proper punishments. So far as political and minister level authorities are concerned, the principle of collective resplonsibility may apply to all those who were forming Govtrnment in the State at the relevant period. This principle of collective responsibility will find them out wherever they happen to be, during the period following the violation of Constitutional and legal rights of the affected citizens whose fundamental and other legal and human rights were violated during their own governance. But even here the insolvency principle should be followed and the political persons also be given fair field and no favoue in the ensuing political process of the State. Let there be no witch hunting of any sort. How the same affected people will accept or reject them will, of course, be an entirely different matter.

✓(E) **Recommendations to prevent recurrence of such killings.**

With its limited knowledge, experience and wisdom, to prevent recurrence of such killings, the Commission would like to make twofold recommendations, namely, (1) the immediate, and (2) the long term.

(1) The immediate measure is, first to try to keep in abeyance, and then gradually dismantle the existing Unified Command structure, which is neither a statute nor a statutory order, but only an arrangement agreed to by the Centre and the State Govt. regarding deployment and operation of the armed forces and other forces of the Union deployed by the Central Govt, "in aid of civil power" of the State of Assam, on request/ requisition by the State Govt. The Structure itself envisages its review after every three months,; and there is no limit to the review and may even envisage its dismantling. The parties concerned may agree to dismantle it in the same way they agreed to create it. The constitutional position as to deployment of the armed forces and other forces of the Union in a State has already been discussed in para 14 of "Part I. INTRODUCTORY." of this report and is referred to in this context. The deployment of the armed forces and other forces of the Union.in the State of Assam has been "in aid of the civil power of the State."In case of the civil power of the State being sufficient enough to cope with its civil problems, *ex hypothesi*, there is no need of armed forces or other forces of the Union for the State.. The armed forces and other forces of the Union were deployed to cope with the internal disturbance thought to have been caused by the activities of the banned outfits disturbing the area leading to its declaration as a disturbed area under the Disturbed Areas Act. However, the disturbance has to a great extent been under control. The life in the State has become normal. The last Assembly election could be held without any disturbance, thanks to the co-operation of the local banned outfits. This may be an appropriate time for effective talks with the local outfits to observe cease fire. first for a short period, say six months, and for gradually longer and longer periods, and for restoration of mormalcy and confinement of the armed forces and other forces of the Union to the barracks, and on continuation and assurance of normalcy, ultimately withdraw, on an assurance of peace on the part of the banned outfits and ultimately lifting of their bans themselves. To achieve this, strenuous, but cordial, talks

between the outfits, the State Government and the Central Govt would be necessary; and there is no reason why such talks should not succeed. Restoration of normalcy. Disturbance and insurgent activities invited the Unified Command Structure. It is in the hands of the people to assure that peace will be maintained and insurgent activities will be curbed and normalcy will be restored. If the public are serious in this restoration of normalcy, there can be no earthly reason why such a situation cannot be brought about by mutual co-operation of the State and its people. Modalities may be worked out in consultation and cooperation among the Government, the political parties, student organizations, the outfits and the general public. Restoration of normalcy will also effect economy. Meanwhile, in the interest of peace and tranquility, there should be no witch hunting. Constitutionally speaking, restoration of normalcy is the terminus of internal disturbances and army deployment in the State.

(2) The long term measures are meticulous observation of the provisions of the Constitution and the laws in carrying out each and every function of the government. All the departments of the Government must function faithfully in accordance with the mandatory provisions of the Constitution of India. In other words, the **long term measures may include, in the long run, the faithful obedience to, and implementation of, the Constitution and the laws of the country.** The Centre-State relationship must also be in accordance with the mandates of the Constitution. Guidance of the famous Sarkaria Commission's report will be helpful in this regard. Manusmriti said (Buller) VIII, 351. "By killing an assassin the slayer incurs no guilt, (whether) he does it in public or secretly; in that case, fury recoils upon fury." 386. "That king in whose town lives no thief, no adulterer no defamer, no man guilty of violence and no committer of assaults attains the world of Sakra (Indra)"; 420. "A king who thus brings to a conclusion all the legal business enumerated above, and removes all sin, reaches the highest state (of bliss)" **Sukracharya's Dandaniti is based on danda**, meaning, punishment. Ancient sages said that without *danda matsyanyaya will prevail* and the strong will devour the weak, even the sacred *prasada* of the *yajna* will be swooped at by crows. *Danda* keeps awake when the country is asleep. All people have innate goodness in them, but some do not. In the absence of punishment those will demoralize others in the society. The norms and laws of today are not materially different. Secret killing amounts to denial of all the constitutional, legal and human rights to the killed, and violation of all these rights by the killer. If killing is by public authorities, it also means trampling over the oaths taken by them on assumption of public offices. The society need be protected from the people with such dangerous propensities. It is trite learning that every action has a reaction, fury generates fury and that brutalities generate more brutalities. Continuous disturbance of the even keel of the society and some excesses committed by some elements had to be checked by equally harsh measures, but that would not justify the lawfully established Government in abdicating its powers, duties and responsibilities to extra-Constitutional organs jeopardizing the legal, fundamental and human rights of the citizens of sovereign, socialist and democratic Republic of India. Those who are entrusted by the people to govern them, ought to be well versed with the provisions of the Constitution of India and the relevant laws, rules, and administrative instructions, and orders framed thereunder. They should be aware of the constitutional limitations as also the rights of the citizens of the State against their State itself. Fundamental rights of citizens, including rights to life, liberty, freedoms, non-discrimination etc. must not be violated. They must never have propensity to kill the citizens they govern, secretly or openly. They must not harbour any kind of hatred or dislike on numerical, religious, communal, racial, ethnic, social, historical, or of any sort whatever. At the minimum they should be true to their oaths and be absolutely free from corruption in any form and manner. While no training course will be appropriate, considering their exalted position and

prestige, periodical seminars and discussions at government levels may refresh their knowledge and experience.

The Police department is the first resort of the people for protection of their life, liberty, property etc. Spreading disaffection towards police is an offence. Everyone has the duty to help police in restoring law and order in society. There is no doubt that our Police force is one of the best in the country. To make our police still more and more efficient and instructed, some officers, by turn, may be sent for advanced training in detection and decision in modern crimes and criminal practices. Such trained police personnel may be put in the police training College. They should undergo a training course in human right and cyber and other present day crimes and crime prevention.

Regarding the SULFAs suspected, it may be appropriate to observe that because of the position in which the SULFAs found themselves, between the devil and the deep sea.. their erstwhile colleagues having been deserted by their act of surrender, they deserved adequate protection, But using their services as "guides, "spotters", trouble-shooters and cclaborators in police functions could never be viewed as proper treatment meted out to the SULFAs, far less their being used as the striking arm or the men in charge of execution. Let them now be bereft of the hallowed positions, and give them fair field and no favour, at least following the insolvency principle of allowing the declared insolvent to have a fresh start in life. How the erstwhile affected people will adore or avoid them will be a different matter altogether.

So far as the Government wings, agencies, and authorities, both official and political, the principle of "resposndent superior" will surely apply; and for all the lapses and misdeeds at the lower levels, higher levels authorities shall be held liable and be subjected to proper punishments. So far as political and minister level authorities are concerned, the principle of collective resplonsibility may apply to all those who were forming Govtment in the State at the relevant period. This principle of collective responsibility will find them out wherever they happen to be, during the period when the violation of Constitutional and legal rights of the affected citizens whose fundamental and other legal and human rights were violated during their governance. But even here the insolvency principle should be followed and the political persons also be given fair field and no favoue in the ensuing political process of the State. Let there be no witch hunting of any sort. How the same affected people will accept or reject them will, of course, be an entirely different matter.

(F) Any other matter related or relevant to the inquiry

Under this term of reference the Commission has decided to discuss the "related or relevant" matter of ex-gratia or compensatory payment to the family of Dimba Rajkonwar, commensurate with the loss and deprivation suffered and obstacles encountered in the development of the family in the line. and to the extent, hitherto planned by the deceased. We are all proud of our welfare State. In case of any mishap or calamity befalling any one or more of our citizens or families, the welfare State considers it to be its duty to render rescue and relief to the affected persons, more so, when the sufferers have reasons to feel that the State itself was the immediate, or even remote, cause of the misery. The rendering of rescue, relief and recompense is irrespective of any fault on the part of the State. It is really praiseworthy of the Chief Ministers of the States in India to have instantly announced such reliefs and rehabilitation packages, and offer in appropriate cases employments to the surviving eligible members of the families, inasmuch as sometimes the very bread earning patriarch is lost to the family. Even the Legislature has now provided for payment of suitable "no-fault liability" compensation irrespective of the claim for fault liability. In the instant case the bread-earning patriarch of the family has been shot dead under the circumstances discussed in the case. The public prosecution may result in punishment of the culprits, but that itself will bring no financial and livelihood replenishment of the loss suffered by the survivors, including the minor children of the bereaved family. The Commission, as submitted by the learned

senior counsel for the Commission and the learned Senior Government Advocate, and for the ends of distributive justice, doth hereby direct the State Government of Assam to pay to the widow of the victim Smti Bharati Rajkonwari, for the benefit of the family, a sum of Rs.5,00,000/- (Rupees five lakhs only) forthwith. More than seven years have already elapsed, and it brooks no farther delay. Directed accordingly.

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**PHULESWARI, DAS, DR. DHARANIDHAR DAS, RUP JYOTI DAS &
LATIKA, DAS SECRET KILLING CASE**

Barama P.S. Case No.. 76 / 1998.

(A) Circumstances leading to killings of Phuleswari, Dharanidhar, Rupjyoti & Latika Das.

On 11.8.98 Tuesday, at 12. 40 midnight, while the first informant Shri Kali Kanta Das, a retired School teacher, aged about 71 years, was sleeping in his house in Nij Juluki Village of Barama, he was awoken by 5/6 loud reports of firing, but he could not ascertain from which directions those sounds came and thought that there was exchange of firing between extremist groups or between police and insurgents. Within minutes thereof, he also heard brief sounds of motor vehicles starting or departing. He considered it unsafe to come out at that unearthly hour. However, early next morning. (12,8;98) Kali Kanta Das curiously came out to the street to meet neighbours and know where was the firing previous night. Nirmali Das, former housemaid of his elder brother by relation, Khagen Das, told him that it was inside the house of Khagen Das. The people present there then had no doubt that something must have happened inside that house and immediately asked Nirmali to go and see the inside of the house. The moment Nirmali entered the house she exclaimed "aiow, all the wretched are lying dead on the floor"; and she started wailing. She was asked by the people to open the west facing door of the house; and the people were asked to enter through it, but not to touch any of the dead bodies. Then Kali Kanta standing on the varendah saw four bodies on the floor. By the side of the eastern (north-south) bed lay the body of the mother Phuleswari Das, heading south, on her belly, face downwards. By her side, head towards east, on their bellies, face downwards, touching each other lay the bodies of her son and daughter-in-law Dr. Dharani Das and (his wife) Rupjyoti Das. Behind their legs, on western part of the floor, lay the dead body of their sister Latika Das under a table.

Kali Kanta, immediately sent for the Village headman Shri Jatindra Nath Das and after he arrived, with him, proceeded to the Barama P.S. at about 6 A.M. and informed the O/C Shri Dwijamoni Singh about the happenings; and the O/C made the G.D. Entry No.330 dt. 12.8.98 and arrived at the place of occurrence within about half an hour and examined the dead bodies. He deposed that when he arrived at the p.o. he found a gathering outside the house and the dead bodies lying inside the room where also some persons were there.. He cordoned off the room which had pucca floor and walls. He did not ascertain if the bodies were already touched by anyone, he did not carry any magnifying glass and did not take any fingerprints or footprints He then collected from the p.o. empty cartridges, misfired ammunitions, empty cases of .9 mm cartridges and fired bullets. He did not press into service any dog squad as there was heavy downpour that night, forgetting that the inside of the room was not affected by rains.D.C. and S.P also arrived O.C.. deposed that they informed all the O.C.s of neighbouring police stations of Nalbari district by police wireless and engaged all sources" to

ascertain the truth or otherwise of the statement. The O.C. said, "this was because the SULFA men who may have belonged to different places and the O.C. s of the appropriate police stations might have known their movement and conduct and could ascertain the truth or otherwise of this information." Admitting that the list of SULFAs of Nalbari district was there at his P.S., he said, he interrogated some of them but no record was made in the case diary, as no clue was found. He interrogated Deep Choudhury at Nalbari, one Shri Dutta and Shri Abubash Bardoloi, who surrendered after this incident, but without any result. All the three have since died. There was no SULFA under Barama P.S. The SULFAs of Nalbari police reserve did not possess Maruti vans, but Abinash Bardoloi had a Maruti car. Asked as to whether after killing case of Dimba Rajkpmwar, the elder brother of ULFA Chief Arabinda Rajkhowar he had any apprehension in this case, the O.C. said: "Even though the confidential information was about the possibility of SULFAs having committed the crime, but as after investigation nothing of proof was found I had no reason to entertain any such apprehension or doubt in my mind." and that "it could not be said that the investigation has failed, because it is still pending." He said that the investigation was postponed for a day on 15.6.98, but as to why it was resumed only from 15.6.2000. he said: "After 16.8.98 the case diary was not written in view of the fact that the investigation I carried on during the period up to 15.6.2000 bore no fruitful result from the investigation and therefore I did not write the diary till 15.6.2000." Answering a question as to whether it was not the law that the investigating officer should keep his day to day record of the investigation, he replied: "Though that is the law in this case I did not write so because there was no fruitful result at all in the investigation." He said that the investigation was supervised by S.P but there was no mention of any missing link in the investigation.

Answering a question as to why the material exhibits were not sent for forensic examination the reply was: "As the exhibits were empty cartridges and fired bullets, therefore, I did not send it for forensic examination. Their description was already there in the case diary. There was no question as to which bullet was fired from which weapon, in which case, forensic examination would have been necessary."

Cross-examined by Shri Diganta Gogoi, Advocate the learned junior counsel for the Commission, and asked about his perception after the investigation of the case, O.C. said: "I received information from a source that it was committed by some SULFAs that it could have been caused by SULFAs because the family was that of ULFA member Shri Mithinga Daimary. The O.C. enquired of the problems of ULFA families of Barama now and then.; and requested the families to bring their ULFA members back to the main stream., but they were not in a position to persuade them. Asked about the weapons used, he replied that one .32 revolver, one .38 revolver and one 9 mm pistol were used; and these varieties were "restricted arms" meaning thereby that these arms "cannot be used by the general public", but could be used by police and army. Considering the similar cases already reported, the O.C. also thought that the Mithinga Daimary family's case was of the same nature as that of the ULFA Chairman Arabinda Rajkhowa's family. Barama police, the O.C. said, maintained surveillance over Mithinga Daimary's house and engaged sources to report on people entering and leaving that house, but police did not consider it to be a vulnerable area. .

Asked as to on what basis he sent his detailed report dated 19.8.98 to S.P, Nalbari that in the night of the occurrence some persons in two white coloured Maruti vans came in high speed from Guwahati side, and committed the (Barama) crime and sped back within 15/20 minutes, and that you suspected them to be SULFAs, the O.C. replied: "From our secret source it was suggested that those could have been SULFAs." He accordingly sent police wireless to O.C.s of Guwahati Citi and Kamrup Districts. Thereby implying that the vans could have come from

and return to those districts. He received the information about the vehicles from the VDP only on 16.9.98

The O.C.. disagreed with the suggestion that police was in nexus with ULFAs and knew that the crime was committed by some ULFAs known to them (Police). with the suggestion that "the secret killing in this case was by some SULFA men who were not only enjoying Govt. protection but were also by the protecting authority to eliminate the members of Mithinga Daimary's family with a view to demoralize him in the ULFA .

I.O. recorded statements of Smt.Nirmali Das, Shri Ramendra Das, Shri Prafulla Das, Shri Prabhat Kalita, Shri Gopesh Das and Shri Jatin Das, All of them repeated more or less the same story, but I/O could get no clue therefrom.

Nirmali Das stated u/s. 161 to police that prior to her marriage in past 'Bohag' for about 4 years she served as maid in the house of Khagen Das; and on 8.8.98 with her husband she came to Khagen Das' house as a guest. In the night of 11/12.8. 98 at about 12.30 A.M.in the room where she and Latika Das were staying, there came sounds of kicking at the door. On the other hand the calling bell constantly rang.. They then came to elder brother Dr. Dharani Das' room and the moment Latika and Nirmali opened the door two firing sounds from outside were heard. Then by opening the inner door to the yard (chotal) and crossing it She (Nirmali) went to the northern house of Prafulla Das, and waking them up she told about the incident. Nirmali was later corroborated by Prafulla Das.

Case diary shows that the I/O suspected involvement of SULFA and their use of white Maruti vans.in the crime. In cross examination he said that he received such information from a source. S.P. directed him to ascertain from which side the white Maruti vehicles came. and to send messages to Guwahati city and Kamrup, may be, based on the idea of those coming from Guwahati side. S.P. also directed him to collect the list of SULFAs of Nalbari district who surrendered before the case was registered. To a question whether some SULFAs were sheltered in the Nalbari Police reserve, O.C. said that some were there towards the end of 1999 and 2000. The V.D.P. guarding the bridge entering Barama reported having seen two white Maruti vans during heavy rains at about 12 midnight on 12.8.98 speeding into Barama and after 15/20 minutes returning speedily back from Barama. To a question as to why he did not take immediate steps to alarm appropriate points as soon as he received this information, the O.C. replied that he received the information only on 16th and then sent messages to Guwahati and Kamrup. He also could not give any explanation as to why, after the incident was reported in Barana thana he did not immediately collect the information from the VDP detailed by him to guard the bridge during night of 12.8.98.

During cross-examination of the doctor who performed the postmortem on Rupjyoti Das it was revealed that she was carrying in her womb a child twenty weeks old, which meant that the child was quickening at the time of its mother's death and life had already come into being and it was killed. This means that five persons were killed. It is in evidence that Nalbari police used to utilize services of SULFAs sheltered within the police reserve in appropriate cases. I/O examined Sri Abinash Bordoloi, a prominent ULFA of the area, but said he could not get any clue from him.

The informant Kalikanta Das was examined as P.W. 3. On seeing the deadbodies, his impression was that the four persons were killed in the same room where the dead bodies were found as the killers had kept them. After the police arrived, they examined the bodies as well as the room and saw bullet holes on the walls, Police also recovered some empty cartridges and used bullets both inside and outside the room and seized and took those away. According to him police did not investigate the case properly and did not arrest anybody and as a result no clue was said to have been found. He did not think that NDFB or BLT had a hand in the incident. Asked whether he believed the State Govt. to have been involved, he said he believed

so particularly because both the Chief Minister and Smt Rekha Rani Das Boro who was local MLA and a Minister did not visit the family after the incident, and that no compensation was paid, after seeing the news paper reports all around. The State Govt was involved and number of such killings increased day by day, he believed that the Govt was involved in the killings.

Affidavits

Affidavits/ Memoranda, to be used as examination-in-chief, were filed and oral evidence were adduced by

adduced by P.W. 1 Shri Bhaba Medhi,; P.W.2 Shri Sunil Ch. Sarma; P.W. 3 Shri Kali Kanta Das P.W.6 Shri Ram Chandra Das; P.W. 7 Shri Nagen Chandra Das; P.W. 8 Shri Khanin Ali Patgiri and P.W.9 Shri Nitul Kachari. P.W. 4 Dr Jatindra Ch, Chowdhury and P.W. 5 Dr. Nalini Kanta Burman are medical witnesses in proof of medical documents. The Memoranda filed before the predecessor Hon'ble Justice Meera Sarma Commission having been more or less similar, were accepted by this Commission as their examinations-in-chief and memorialists were treated as witnesses and cross-examined on them. In some of those it was stated that some organ of the Unified Command Structure repeatedly requested Dr. Dharanidhar Das, elder brother of Deepak Das Mithinga Doimary to come to peace talks, which could not be done as Dr. Das was not in contact with his younger brother. This was reminiscent of the previous evening's killing of Dimba Rajkonwar vis a vis his younger brother Arabinda Rajkhowa, the ULFA Chairman. However, we have to decide this case not on analogy, but on its own evidence. P.W. 1 Shri Bhaba Medhi, a school teacher, in his Memorandum stated:

"That Sir, Dr. Dharanidhar Das was the elder brother of Sri Dipak Das, alias Mithingga Daimary, the central publicity Secretary of ULFA, banned by the central Govt. of India. Before his brutal killing, the Assam police, the paramilitary forces and the Indian Army (Unified Command Structure), in various ways, pressed hard upon Dharanidhar Das, for a number of days, for the immediate surrender of his brother, Mithingga Daimary. Very often a reign of terror was let loose upon the whole family by the United Command Structure, intending to collect any information regarding the whereabouts of Shri Daimary. Even some few month before his tragic killing, Dr. Das was taken out from his house by the said Unified Command Structure, in search of Mithingga Daimary with the same intention of collecting any clue, in connection with the whereabouts of Sri Daimary and was kept confined in some military camp for a number of days. Before his sad killing Dr. Das told about his insecurity to some of his intimate friends. But even inspite of bringing this matter to the knowledge of local Administration, it took no measure for his security."

We were told that the army personnel changed from time to time and no names and addresses could be supplied. All the memoranda received from different witnesses contained this statement. In his affidavit P.W. 1 also stated the same position of victim Latika Das, younger sister of Dipak Das @ Mithingga Daimary. The witness was thoroughly cross-examined at the hearing, but he could not be shaken as to these statements. It was also stated that it was a believable ground in order to bring the top leaders of the ULFA like Mithingga Doimary back to the main stream by weakening him mentally, and in order to create an atmosphere of terror, in the locality at that time the members of the family were targeted. In cross he added that on various days before killing Phuleswari Das and other members of her family police, CRPF and army went to their house on various nights, raided and ransacked the house and asked them to persuade Mithingga to surrender and come to the main stream. Khagen Chandra Das, since deceased, was also taken to the office of the S.P. and similarly pressurized. Further it was stated that an army camp of 5 Dogra Regiment, stationed at Nathkuchi village and they visited the family house and pressurized the members to make Mithingga surrender. Witness also deposed that the complaint to police and district administration against the pressurizing torture having not been heeded the inmates felt totally insecure and helpless, Witness also stated that some SULFAs were seen moving with the police and pointing out the houses of ULFAs.

Mr. Prafulla Kumar Mahanta the Chief and Home Minister of that time in his affidavit dated 2.6.06, para 2 refuted saying that the statement of P.W. 1 Shri Bhaba Medhi before the Hon'ble Commission to the effect that the Assam Police and United Command Structure, in various ways pressed hard upon Smt.(Latika) Das for the immediate surrender of her elder brother Mithinga Daimary and that very often a reign of terror was let loose upon the whole family by the Unified Command Structure intending to collect any information regarding the whereabouts of of Shri Daimary and that this secret killing may also be the result of some evil design as planned by the Unified Command Structure within or without the knowledge of both the Governments, Central and State etc, are nor true. That the suspicion of P.W. 1 Sri Bhaba Kanta Medhi that the merciless killing of Smti Das may be committed by the Unified Command Structure in collaboration with some anti-social group as stated in his Memorandum submitted before the Hon'ble Commission is also not based on any fact. Or proof and accordingly his suspicion is not correct. That it is also not correct that the anti-social group also acted in collaboration with the Assam Police as stated in his evidence. Shri Mahanta, then asserts that during his tenure as Chief Minister of Assam, when the Assam police received any information regarding any unlawful act or anti-social act committed by any person or anti-social group including SULFA, the police took action against them as per law. In para 4 Shri Mahanta stated: "I also deny that myself or my then Government was directly or indirectly involved in the killings of the family members of Mithinga Daimary."

In para 5 Shri Mahanta asserts that that before entering into the office of the Chief Minister of Assam, he took oath of office and secrecy under the Constitution of India and that neither he nor his Govt. did any act or thing which went against the provision of the Constitution of India; and that he took utmost care to provide protection of life and personal liberty of the people of the State and there could not be any question of making conspiracy by any elected Government to annihilate the members of the family of ULFA members; and that his Government was not connected or involved in killing of the family members of Mithinga Daimary or any other killings of similar nature. Rather he condemned such killings and directed the concerned authority to enquire into the matter so that the real culprit may be booked and punished..

These statements in the abstract may sound good, but those will not absolve the Chief and Home Minister from liability should any fault be found with those who dealt with the secret killings nor will the then Government and the then party in power shall escape from the collective responsibility.

Collective responsibility has two meanings.: the first that of members of a Government are unanimous in support of its policies and exhibit that unanimity on public occasions although while formulating the policies they might have differed in the cabinet meeting.; the second that the ministers who had an opportunity to speak for and against the policies in the cabinet and thereby personally and morally responsible for its success and failure, No cabinet decision on secret killing has been placed before the Commission, but there were discussions on the floor of the Assembly. There were differences in views, but none said that it was not within the jurisdiction of the Assembly. That apart, these killings have been committed with a political motive and are clearly 'Ulfocidal,' perhaps with the motive of perpetuating the party's rule. Government was surely accountable for the same.

Questioned on the two cases, namely, that of killing of Dimba Rajkonwar and that of Dr. Dharanidhar Das and family, Shri G.M. Sroavastava, then I.G.P.(Operations), Assam, said (A, 88) "Normally police compares the cases on the basis of modus operandi and circumstances. In this case I have not seen the case diary nor I have seen the statements. But the reason and motive behind the killings may come out only after thorough investigation of the situation and

examining in detail every aspect and possibilities by investigation officers and the officers of supervisory level”.

Q.47. If in a concrete instance a member of the family was requested to bring their member of the family in the ULFA or similar organization to the main stream and they fail to bring them back, they were also arrested and detained under TADA and aegedly tortured and sometime thereafter, it so happened, that the very member of the family has been killed in a way that it is not possible to know who were the killers, what would be your normal conclusion in such a matter?

. Ans. Naturally a suspicion will arise.”

As regards the series of Enquiry Commissions, mentioned in Mahanta's affidavit, let it be said that the appropriate Government is vested with the jurisdiction to appoint or not to appoint a Commission of Inquiry under the Commissions of Inquiry Act 1952. It is also within the jurisdiction of the appropriate Govt to accept or not to accept a report submitted to it by the Inquiry Commission appointed by it. In Boarder Security Force v, State of Meghalaya, reported in AIR 1989 Gauhati 81 a Full Bench of the Gauhati High Court held that even where there is deployment of the armed forces and other forces of the Union in a State, the State Government has the jurisdiction to appoint an Inquiry Commission.

P.W. 1 Shri Bhaba Medhi, a member of the Baksa Press Club, who submitted a Memorandum before the predecessor Hon'ble Justice Meera Sarma Commission and prayed that the same be treated as one submitted before this Commission, and the same being so treated, in his examination-in-chief, inter alia, said; that Smt. Latikka Das, who was no other than the sister of ULFA Central Publicity Secretary Mithinga Daimary, before the incident of killing on 12.8.98, “the para military forces and the Indian Army(United Command Structure), in various ways pressed hard upon Smt. Das, for a number of days, for the immediate surrender of her elder brother, Mithinga Daimary. Very often a reign of terror was let toose upon the whole family by the United Command Structure, intending to collect any information the whereabouts of Sri Daimary. Before her sad killing Smt. Das told about her fear of sad killing to some of her intimate friends But even inspite of bringing the matter to the knowledge of the local Administration, it took no measures for her security.” “The witness also suspected that the killings could have been planned and designed by the Unified Command Structure itself with or without the knowledge of the Central and State Govts. Asked to elaborate, in cross-examination the witness said that “on various days before killing of Phuleswari Das and other members of her family, police, CRPF and army went to their house on various nights raided the same ransacked the articles in their house and had thrown them away putting various questions to the inmates and ordered them to pursue Deepak Das alias Mithinga Daimary to surrender and come to the main stream Then Dr. Dharanidhar Das, elder brother of Mithinga Daimary was brought to the S.P.'s office, Nalbari on various dates and he was also asked to pursue Mithinga Daimary to surrender before the Authority”. Deepak's father Khagen Das, since deceased, was also brought to the S.P.'s office, Nalbari and similarly pressurized. Asked for detail he said that Mrs. Phuleswari told the witness, Dr Sunil Sarma and many responsible persons of Barana were told about her feeling of insecurity. People had seen an army camp of 5 Dogra Regiment (but personnel kept on changing. AT Hathkuchi, and the inmates of Phuleswari Das' house told the people that they were visited by army belonging to 5 Dogra Regiment and put pressure on her to for surrender of Mithinga Daimary. The ransacking of the house was said to have been published in newspapers with photos. Witness also alleged that when harassments were meted to the family of Mrs. Phuleswari Das”almost continuously protests were lodged and security was sought for from the districr administration, but the district administration replied that it had been done under the instruction of the higher-ups of the administration.” But they did not disclose the higher-ups.

About survivors in the family the witness said Mithinga Daimary, his younger brother Nitul Kachari, who was then studying at Pune, and a son of Dharanidhar and Rupjyoti, Bhaskar Das, then aged only 4/5 years.

This witness was thoroughly cross-examined both by Dr. Y.K. Phukan Senior counsel for the Commission and Shri P.K. Musahari, the learned Senior Govt. Advocate, Assam, but his evidence could not be shaken.

P.W. 2 Dr. Sunil Ch. Sarma, aged 53 years is a Lecturer in Assamese in Barama College. His Memorandum submitted before the predecessor Hon'ble Justice Meera Sarma Commission, is, on his prayer, treated as one submitted before this Commission. He was also thoroughly cross-examined by Mr. P.K. Musahari, the learned Senior Govt Advocate, Assam; and he stood it well. He emphasized that his Memorandum was for the Adyasraddha Udjapan Samity and it truly reflected the protesting voice of the people of Greater Barama area; and that thousands of people attended the public Sraddha ceremony and their representatives prepared the Memorandum. However, we concentrate on the factual aspect. Witness testifies that Dr. Dharanidhar Das was a qualified medical practitioner and was serving as the District Leprosy Officer, Nalbari district, and otherwise also a very popular and literary figure of Barama area, and served as the Secretary of the Nalbari district Sahitya Sabha. Mrs. Rupjyoti Das was serving as a teacher for some time, otherwise a beautiful and respected housewife. Smt. Latika Das was an educated and cultured girl about to enter her profession. P.W. 2 believed that such an incident could not have happened without the consent of the then Chief Minister, Assam, Shri prafulla kumar Mahanta; and in conspiracy with the State Govt, the Unified Command Structure, the police and the SULFA. To a question about Dr. Dharanidhar Das having a threat perception, replied that on 11.8.98 Dr. Das came to know, after reading the news paper about killing of Dimba Rajkonwar of Dibrugarh Dr. Dharanidhar told the witness that his (Dr's) own life and the lives of other members might similarly be as insecure as Dimba Rajkonwar's.. On the witness' suggesting that he should live elsewhere, Dr. Das told that he would stay at his home that night and would go elsewhere the next day, This was corroborated by Kalikanta Das P.W. 3 who said that on the eve of the incident he did not hear anything about the presage, but after the incident it spread from mouth to mouth that Dr. Dharanidhar had the presage that he might be killed so that he would have taken shelter elsewhere, but as his father Khagen Das went to Manikpur block, so he could not go to take shelter elsewhere leaving the house without any male person., Alas, destiny took its toll that very night

P.W. 6 Ram Chandra Das said that with the army and the police he used to see some other unknown persons moving with them and some such people also visited the house of Mithinga Daimary before the incident. Those were known to have been SULFAs. He also agreed that this might amount to constituting these people into an extra-constitutional authority. P.W. 7 Shri Nagen Ch. Das deposed that Mrs. Rupjyoti Das was also pressurized by different Govt agencies and she also had the feeling of insecurity and accordingly reported to Barama police who took no step to allay her fear of insecurity. P.W. 8 Mr. Khanin Ali Patgiri, a colleague of Dr. Dharanidhar Das in Barama Sahitya Sabha said that two days before the incident Dr. Dharanidhar Das, seeing policemen all around and also seeing some unknown people among them expressed that he was afraid that some steps might be taken to finish them. The witness cautioned him not to move about as he was earlier picked up by the CRPF and the military. The gist of P.W. 9 has already been stated.

An important witness is N.W. 1 Shri Apurba Jiban Barua, the then S.P, Nalbari district whereunder Barama then fell. His frank and frugal testimony, when cross-examined by Mr P.K. Musahari, the learned Senior Govt. Advocate, Assam, was helpful in many respects. According to him during his tenure (1997- 1999) there were several extremist groups operating in Nalbari district, namely, the ULFA, NDFB, BLTF, PDF, BTF. Cobra and some Gurkha

group were active. Their internecine relationships were criss cross and their networking complicated, rendering the situation volatile. The task of bringing amity between the ULFA and NDFB was difficult because both of them demanded separate sovereign states, and were guided by separate NSCN factions, ULFA by the Khaplang faction and the NDFB by the Isaac-Muivah faction. Witness said that when some ULFAs surrendered and become SULFAs, they needed security and protection against their erstwhile ULFA colleagues; and that scope of ULFA-SULFA clashes persisted, and so, inspite of such protection and security provided by Govt, some of them were killed. Witness did not state anything about both the ULFA and SULFA being conducted by a common superior. He stated that Govt. provided security and protection to SULFAs and in deserving cases P.S.O.s were also provided, as for instance, to Shri Abinash Bordoloi of Nalbari, but unfortunately, he was also killed. Witness was not sure as to whether Abinash Bordoloi surrendered before or after this incident.

While Mr. Barua said that it would not be correct to say that the SULFAs were utilized by the Police, "nevertheless Police used to take some informative guidance from SULFAs for the purpose of the maintenance of peace in the society." Regarding Police taking services of SULFAs as source, answer was that "normally the SULFAs were not to be exposed by the Police. But, certainly in particular occasions where they could provide some information and guidance in specific important cases, police used to take the benefit of their services without endangering their lives." Mr. Barua could not say whether the army and the CRPF also did the same. Mr. Barua admitted that in appropriate cases the SULFAs were being used by police as informers and guides.

As in evidence several witnesses stated to have seen some unknown persons moving with policemen, Mr. Barua was asked as to whether the Police Act of 1861 provided for appointment of Special Police officers, his reply was "yes", but he did not remember if any such appointments, of SULFAs or otherwise, were made in Nalbari district. By his time some fifty plus important ULFAs surrendered in Nalbari district and police maintained a list of them. They were provided package for livelihood centrally from Dispur.

Mr. Barua said that before 13.8.98 no check-posts were set up at Akhra Chowk on the east and at Kadamtala on the west of Barama for Independence day. As there was no threat perception on Mithinga Daimary's house even after the news of Killing of Dimnba Rajkonwar, elder brother of ULFA Chief Arabinda Rajkhowa, and, witness said, there were no such requests from the members of the family; and further that Area Domination scheme did not cover the area where Mithinga Daimary's house stood. Though that scheme also covers the incidence of crime, moving around and trying to cause harm, but in view of the limited nature police force, it was not possible to provide Area Domination covering the entire district or an area of a particular police station, unless, of course some information or such imminent insurgent activity is received.", he said. He did not agree with the suggestion that because of not setting up of check-posts at Akhra Chowk and Kadamtala, Barama area was left free for the miscreants to move freely, commit crimes and escape undetected.

As regards investigation, witness supervised the investigation but no footprints/ fingerprints were taken no apparatus were used. No dog squad was pressed into service, the explanation being that due to heavy downpour use of such measures could not be made. No motive behind the murder could be ascertained, and no enmity with anyone could be known. Witness said that during his tenure there were no reports of SULFAs creating trouble, "in view of the fact that the SULFA boys were under our control and in as much as we did not allow the SULFA boys to go and create public nuisance or any sort of disturbances."; and the SULFA boys who surrendered and came overground were under our surveillance as well.", but no surveillance register was maintained in their case..but said, surveillance could be effectively maintained without any register. "We kept some highly vulnerable SULFA boys in the police reserve areas only for

their protection and rehabilitation purposes as the direction came for doing so from the Govt." Of the vulnerable SULFAs he could remember only Abinash Bordoloi who, later was killed after his (Barua's) transfer on 2.3.2000..

About unsatisfactory progress of the case witness said: "In view of the fact that no clue was found on investigation of the case, in one sense it could be said that the progress was not satisfactory, but the investigation proceeded for finding a clue"; and "in view of the fact that eye witnesses were not available and the public opinion did not come forward and in absence thereof we found it difficult to find any clue and nothing further could be done and we kept the case pending." In reply to a statement that the witness was close to the then Chief Minister, Shri Prafulla Kumar Mahanta, the witness said that he was educated at Shillong and as such not associated with the AASU movement and that he never personally met the Chief Minister before he was posted in Nalbari, and further that it was only because no other officer was willing to, he was posted in complicated Nalbari district. The fate of investigation, it is noted, was not dissimilar to those of other cases under enquiry.

Attention of the witness being drawn to a statement that police should not have used the SULFA boys in countering terrorism, witness replied: "We do not use the SULFA boys in countering terrorism. Of course we do collect intelligence from them as regards the activities of the ULFA, their hide-outs, in foreign countries, their linkmen in India and abroad, their sympathizers within the country and the people who were sponsoring them. In fact, under the scheme laid down by the Govt. we tried to rehabilitate them in their lives." He said.

Attention of the witness having been drawn to a case diary noting made by the I/O in Barama P.S. Case no. 76/98 (instant case) to the effect that the crime was perpetrated by some SULFA men, witness replied that he saw it for the first time, he discussed the matter with I/O, asked him about its basis, applied his mind to it, and instructed to take necessary steps to finalise clue.. Asked about a news item saying that Mithinga Daimary's father Khagen Das suspected the army to have committed the crime, witness said that it was an individual's perception, and even so, he discussed the matter with the Commander of the Battalion who also asked as to who perpetrated the crime and how the army was involved.

N.W. 2 Shri Ranjan Bhuyan, the then Dy.S.P. Nalbari did not supervise the investigation of the case as it was not allotted to him. He was aware of some ULFAs surrendering Nalbari; and the surrenderees were given rehabilitation packages and they were sheltered within the Nalbari Police reserve and allowed to occupy quarters meant for non-gazetted police officers and constables; and that about 40/50 such quarters were occupied by them. Some of the occupants were Sri Abinash Bordoloi, Shri Dilip Kakoty, Shri Satyen Barman, Shri Nitu Datta, Shri Bikash Dutta, etc. The SULFA occupants of police quarters ran a mess for themselves. The movements of these occupants was controlled within the reserve, but not outside except that the reserve gates were closed by 8/9 P.m. No Movement register was maintained. No permission was needed to go out and to re-enter. They ran a co-operative society on a plot of 100 bighas of Govt land between the later part of 1999 and early 2000 for their livelihood. Abinash Bordoloi was admittedly killed in that farm, Witness gave the sheltering date to be middle or later part of 1999 approximately, but did not say that there were none in later part of 1998.. The SULFAs were allowed to use police vehicles driven by police drivers on some occasions. Witness disagreed with the suggestion that Nalbari Police reserve SULFAs committed the Barama killings on 12.8.98. The O/C said that patrolling the roads and bridges of Barama started before 12.8.98, but there was no report of anything important. He did not remember to have received any report from the V.D.P which was detailed for patrolling throughout the night of 12.8.98, but "may be a day or two after 12.8.98 received the information that at about 1.00 A.M. on 12.8.98 when it was raining heavily 2 or 3 small vehicles crossed the Akhra Chowk from west to east coming from the Akhra Chowk

coming from the Barama side When they were asked about the particulars of the vehicle they said that it could be ¾ small vehicles Maruti vans sped away from Barama side to Nalbari side. The VDP comprised of Sukha Pathak, Ramesh Barman, Sarbeawar Barman, Anil Barman and Khagen Das. All from the village of Akhra Chowk as stated by Gopal Barman at page 58 of the case diary."

Arms and ammunitions used. Ascertainment of the types and calibres of arms and ammunitions used in commission of the crime may also lead to some clue. In this case the material exhibits have not been sent for forensic/ ballistic experts. The O/C has stated that .32 , .38 revolvers, and 9 mm pistols were used; and that all these three are restricted weapons. By "restricted", he perhaps, meant "prohibited" weapons.. Section 7 of the Arms Act, 1959 provides: Prohibition of acquisition or possession or of manufacture or sale of prohibited arms or of prohibited ammunitions. - No person shall-

- (a) acquire, have in his possession or carry; or
- (b) manufacture, sell, transfer, convert, repair, test, or prove, or
- (c) expose or offer for sale, or transfer or have in his possession, for transfer, conversion, repair, test or proof, any prohibited arms or prohibited ammunitions unless he has been especially authorized by the Central Government in that behalf.

This Act provides for issue of licences for .12 smooth bore shot guns, air rifles and .22 bore rifles for protection of crops and/or sports or target practice, as the case may be.. That means .32, .38 revolvers and .9 mm pistols are not to be issued to general public, but only to those specially authorised by the Central Govt. in that regard.

Section 13 of the Act provides for grant of licenses. Under sub-section (3) thereof the licensing authority shall grant -

- (b) a license under section 3 where the licence is required -
 - (i) by a citizen of India in respect of a smooth bore gun having a barrel of not less than twenty inches in length to be used for protection or sport or in respect of a muzzle loading gun to be used for bonafide crop protection

Provided that where having regard to the circumstances of any case, the licensing authority is satisfied that a muzzle loading gun will not be sufficient for crop protection, the licensing authority may grant a license in respect of any other smooth bore gun as aforesaid for such protection; or

- (ii) in respect of a point 22 bore rifle or an air rifle to be used for target practice by a member of a rifle club or rifle associated licensed or recognized by the Central Government;

(b) A licence under Section 3 in any other case or a licence under Section 4, s, Section 6, Section 10 or Section 12, if the licensing authority is satisfied that the person by whom the licence is required has a good reason for obtaining the same under section 5

Modi in his Medical Jurisprudence and Toxicology, Chapter XII dealing with "injuries by Mechanical Violence, gives an introduction to firearms and ammunitions. Under smooth bored firearms he includes Shotgun, which, he calls a shoulder arm having barrel that is smoothly bored inside and is intended traditionally for firing of a charge composed of one or more round lead balls or pellets of varying size. Rifled firearms have spiral grooves cut upon the inner surface of the bore to impart rotatory motion spinning in the longer axis thereby stabilizing the projectile thereby ensuring greater accuracy of impact and longer range. A rifle is also a shoulder arm designed to hit targets at longer range.

A pistol is a hand-gun in which the cartridge is directly loaded into the chamber of the barrel to distinguish it from a Revolver in which the cartridges are loaded into a rotating cylinder (or drum) in the rear of the breech of the barrel.

In Air Rifles and Air Pistols compressed air is used to fire lead slugs.

Jhala & V.B. Raju's Medical Jurisprudence, 4th ed., Chapter XXXII (p.316) says that "a fire-arm is capable of producing different types of injuries in different ways depending on proximity of or distance of the firearm, the type of the fire-arm and the type of tissue encountered, that is, the region of the body. Actual identity of the fire-arm is the job of a ballistic expert. But the forensic medicine expert has to know the specific type of injuries by various common types of fire-arms used."

Neither Modi, nor Jhala & Raju has dealt with the prohibited arms question. But HWV Cox Medical Jurisprudence and Toxicology, 7th ed. Chapter VII, while discussing injuries (p.454) under Rifled weapons says. Rifled weapons are commonly encountered in military and police situations, and also high-powered hunting weapons designed for large animals. They are also employed in the air-rifles, weapons powered by compressed air provided by spring loading, with a caliber of 0.177 or 0.22 inches" There is, thus, an indication that rifle bored firearms are associated with police and the military.

At p. 464 the types of rifled weapons are described as under:

Revolver. The revolver refers to a common type of hand gun in which a number of cartridges with bullets inserted into their neck are rotated in a metal cylinder, so that a new one is brought into line with the barrel each time the trigger is pulled. The revolver tends to have a relatively low muzzle velocity of the order of 500 feet per second. The diameter of the barrel indicates the size of the revolver and common types are 0.45, 0.38, 0.32. or 0.22 inches. A revolver cartridge may be recognized by the fact that the base has a projecting rim which holds the cartridge in place in the cylinder. The bullet is frequently of lead without any jacket of a harder metal.

Automatic pistol is more correctly called a 'self-loading pistol' as instead of a rotatory movement as in the revolver, part of the gas pressure of each discharge is used to bring up a new shell into the breech. The new shells may be contained in a clip either in the stock of the gun or in a separate magazine. The automatic cartridge case does not have a projecting rim but a groove around the base where the ejector grips the shell case. Automatic pistols have many calibers, but those such as the Mauser, Beretta, Luger, etc., are calibrated in millimeters, commonly, 7.65 mm and 9 mm. The muzzle velocity of an automatic is greater than that of a revolver and may approach 1000-1200 feet per second. The use of prohibited bore weapon may be indication of military/ police agency in commission of crime.

On 16.8.98 O/C, Barama by W.T informed S.P. Nalbari that it had been ascertained that on the date of occurrence some persons in two white colour Maruti cars came from 'Ghti' side and after committing crime within 15/20 minutes fled away again by the said vehicles. The O/C also requested S.P to carry on his enquiry to find out the vehicles and miscreants; and said that it was strongly suspected that some SULFA members were responsible for the crime. The C.D of Case No. 76/98 u/s.448/302IPC r/w s.27 of Arms Act. shows that the I/O gave a message to all O/Cs of Guwahati city and Kamrup for enquiry and necessary action. The O/C Barama P.S. on 15.12.99 issued a statement "To whom it may concern" *inter alia* that :

"During course of investigation it came to light deceased Doctor Dharani das was the elder brother and deceased phuleswari Das was the mother of ULFA member Deepak Das @ Mithinga Doimari, the central publicity secretary of ULFA and the hands of suspected SULFA is suspected to be involved in the case. The case is under investigation and is pending for to trace out and arrest of involved accuseds"

The I/O accordingly suspected the involvement of SULFA in the crime; and considered the case as sensitive. The supervisory note of A.T.V. Krishna I.P.S., S.P. Nalbari dated 14.7.2000 shows that he treated the case very sensitive; and, on I/O.s note, said that white Maruti vans were used by the killers, who were suspected to be SULFAs. The S.P instructed I/O. to: ascertain from which side the vehicles came and whether any villager noted their registration

numbers; ascertain the SULFAs that surrendered before the incident; ascertain whether Deepak Das @ Mithinga Doimari had any personal rivalry with others of SULFA cadre; ascertain from surrounding districts police stations whether they saw two white Maruti vans in the night of occurrence; ascertain from Nij Juluki villagers if the victim family received any prior threats to their lives; verify whether the news paper reports of ULFAs attacking some SULFA houses in retaliation of this incident and collect those case numbers to ascertain which areas were patrolled by Barama police that night and if there could be inputs therefrom; ascertain whether some ULFAs surrendered after the incident and whether they could provide any clue. I/O was to submit report within 2 months. This showed that the SULFA retaliation hypothesis was being probed, but not yet established. No record of its being established is available on records..

Affidavits/ Memoranda, to be used as examination-in-chief, were filed and oral evidence were adduced by P.W. 1 Shri Bhaba Medhi,; P.W.2 Shri Sunil Ch. Sarma; P.W. 3 Shri Kali Kanta Das; P.W.6 Shri Ram Chandra Das; P.W. 7 Shri Nagen Chandra Das; P.W. 8 Shri Khanin Ali Patgiri and P.W.9 Shri Nitul Kachari. P.W. 4 Dr Jatindra Ch, Chowdhury and P.W. 5 Dr. Nalini Kanta Burman are medical witnesses in proof of medical documents. The Memoranda filed before the predecessor Hon'ble Justice Meera Sarma Commission having been more or less similar, were accepted by this Commission as their examinations-in-chief and memorialists were treated as witnesses and cross-examined on them. In some of those it was stated that some organ of the Unified Command Structure repeatedly requested Dr. Dharanidhar Das, elder brother of Deepak Das # Mithinga Doimari to come to peace talks, which could not be done as Dr. Das was not in contact with his younger brother. This was reminiscent of the previous evening's killing of Dimba Rajkonwar' vis a vis his younger brother Arabinda Rajkhowa, the ULFA Chairman. However, we have to decide this case not on analogy, but on its own evidence. P.W. 1 Shri Bhaba Medhi, a school teacher, in his Memorandum stated:

" That Sir, Dr. Dharanidhar Das was the elder brother of Sri Dipak Das, alias Mithingga Daimary, the central publicity Secretary of ULFA, banned by the central Govt. of India. Before his brutal killing, the Assam police, the paramilitary forces and the Indian Army (Unified Command Structure), in various ways, pressed hard upon Dharanidhar Das, for a number of days, for the immediate surrender of his brother, Mithinga Daimary. Very often a reign of terror was let loose upon the whole family by the United Command Structure, intending to collect any information regarding the whereabouts of Shri Daimary. Even some few month before his tragic killing, Dr. Das was taken out from his house by the said Unified Command Structure, in search of Mithinga Daimary with the same intention of collecting any clue, in connection with the whereabouts of Sri Daimary and was kept confined in some military camp for a number of days. Before his sad killing Dr. Das told about his insecurity to some of his intimate friends. But even inspite of bringing this matter to the knowledge of local Administration, it took no measure for his security."

We were told that the army personnel changed from time to time and no names and addresses could be supplied. All the memoranda received from different witnesses contained this statement. In his affidavit P.W. 1 also stated the same position of victim Latika Das, younger sister of Dipak Das @ Mithingga Daimary. The witness was thoroughly cross-examined at the hearing, but he could not be shaken as to these statements. It was also stated that it was a believable ground in order to bring the top leaders of the ULFA, like Mithingga Doimari back to the main stream by weakening him mentally, and in order to create an atmosphere of terror, in the locality at that time the members of the family were targeted. In cross he added that on various days before killing Phuleswari Das and other members of her family police, CRPF and army went to their house on various nights, raided and ransacked the house and asked them to persuade Mithingga to surrender and come to the main stream.

Khagen Chandra Das, since deceased, was also taken to the office of the S.P. and similarly pressurized. Further it was stated that an army camp of 5 Dogra Regiment, stationed at Nathkuchi village and they visited the family house and pressurized the members to make Mithingga surrender. Witness also deposed that the complaint to police and district administration against the pressurizing tortre having not been heeded the inmates felt totally insecure and helpless, Witness also stated that some SULFAs were seen moving with the police and pointing out the houses of ULFAs.

(B) The identity of the killers and their accomplices, if any.

The killing of Phuleswari Das, Dr. Dharanidhar Das, Rupjyoti Das and Latika Das was secret both as to time and manner of killing and also as to identity of the killers. Accomplishes are the parties to the crime. On the basis if degrees of complicity to the crime, the accomplices are generally divided into perpetrators and accessories. An accessory is one who excites or helps the commission of an offence by the perpetrator. Perpetrator means exclusively the person who in law performs the offence. More precisely, the perpetrator is the person who. being directly struck at by the criminal prohibition, offends against it with the necessary *mens rea* or negligence.

Shri Prafulla Kumar Mahanta the Chief and Home Minister of that time in his affidavit dated 2.6.06, para 2 refuted saying that the statement of P.W. 1 Shri Bhaba Medhi before the Hon'ble Commission to the effect that the Assam Police and United Command Structure, in various ways pressed hard upon Smt.(Latika) Das for the immediate surrender of her elder brother Mithinga Daimary and that very often a reign of terror was let loose upon the whole family by the Unified Command Structure intending to collect any information regarding the whereabouts of of Shri Daimary and that this secret killing may also be the result of some evil design as planned by the Unified Command Structure within or without the knowledge of both the Governments, Central and State etc, are nor true. That the suspicion of P.W. 1 Sri Bhaba Kanta Medhi that the merciless killing of Smti Das may be committed by the Unified Command Structure in collaboration with some anti-social group as stated in his Memorandum submitted before the Hon'ble Commission is also not based on any fact. Or proof and accordingly his suspicion is not correct. That it is also not correct that the anti-social group also acted in collaboration with the Assam Police as stated in his evidence. Shri Mahanta, then asserts that during his tenure as Chief Minister of Assam, when the Assam police received any information regarding any unlawful act or anti-social act committed by any person or anti-social group including SULFA, the police took action against them as per law. In para 4 Shri Mahanta stated: "I also deny that myself or my then Government was directly or indirectly involved in the killings of the family members of Mithinga Daimary."

In para 5 Shri Mahanta asserts that that before entering into the office of the Chief Minister of Assam, he took oath of office and secrecy under the Constitution of India and that neither he nor his Govt. did any act or thing which went against the provision of the Constitution of India; and that he took utmost care to provide protection of life and personal liberty of the people pf the State and there could not be any question of making conspiracy by any elected Government to annihilate the members of the family of ULFA members; and that his Government was not connected or involved in killing of the family members of Mithinga Daimary or any other killings of similar nature. Rather he condemned such killings and directed the concerned authority to enquire into the matter so that the real culprit may be booked and punished..

These statements in the abstract may sound good, but those will not absolve the Chief and Home Minister from liability should any fault be found with those who dealt with the secret killings nor will the then Government shall escape from the collective responsibility.

Collective responsibility has two meanings.: the first that of members of a Government are unanimous in support of its policies and exhibit that unanimity on public occasions although while formulating the policies they might have differed in the cabinet meeting.; the second that the ministers who had an opportunity to speak for and against the policies in the cabinet and thereby personally and morally responsible for its success and failure. No cabinet decision on secret killing has been placed before the Commission, but there were discussions on the floor of the Assembly. There were differences in views, but none said that it was not within the jurisdiction of the Assembly. That apart, these killings have been committed with a political motive and are clearly 'Ulfocidal,' perhaps with the motive of perpetuating the party's rule. Government was surely accountable for the same.

Questioned on the two cases, namely, that of killing of Dimba Rajkonwar and that of Dr. Dharanidhar Das and family, Shri G.M. Sroavastava, then I.G.P.(Operations), Assam, said (A, 88) "Normally police compares the cases on the basis of modus operandi and circumstances. In this case I have not seen the case diary nor I have seen the statements. But the reason and motive behind the killings may come out only after thorough investigation of the situation and examining in detail every aspect and possibilities by investigation officers and the officers of supervisory level".

Q.47. If in a concrete instance a member of the family was requested to bring their member of the family in the ULFA or similar organization to the main stream and they fail to bring them back, they were also arrested and detained under TADA and aegedly tortured and sometime thereafter, it so happened, that the very member of the family has been killed in a way that it is not possible to know who were the killers, what would be your normal conclusion in such a matter?

. Ans. Naturally a suspicion will arise."

As regards the series of Enquiry Commissions, mentioned in Mahanta's affidavit, let it be said that the appropriate Government is vested with the jurisdiction to appoint or not to appoint a Commission of Inquiry under the Commissions of Inquiry Act 1952. It is also within the jurisdiction of the appropriate Govt to accept or not to accept a report submitted to it by the Inquiry Commission appointed by it. In Boarder Security Force v, State of Meghalaya, reported in AIR 1989 Gauhati 81 a Full Bench of the Gauhati High Court held that even where there is deployment of the armed forces and other forces of the Union in a State, the State Government has the jurisdiction to appoint an Inquiry Commission.

P.W. 1 Shri Bhaba Medhi, a member of the Baksa Press Club, who submitted a Memorandum before the predecessor Hon'ble Justice Meera Sarma Commission and prayed that the same be treated as one submitted before this Commission, and the same being so treated. in his examination-in-chief, inter alia, said; that Smt. Latikka Das, who was no other than the sister of ULFA Central Publicity Secretary Mithinga Daimary, before the incident of killing on 12.8.98, "the para military forces and the Indian Army(United Command Structure), in various ways pressed hard upon Smt. Das, for a number of days, for the immediate surrender of her elder brother, Mithinga Daimary. Very often a reign of terror was let toose upon the whole family by the United Command Structure, intending to collect any information the whereabouts of Sri Daimary. Before her sad killing Smt. Das told about her fear of sad killing to some of her intimate friends But even inspite of bringing the matter to the knowledge of the local Administration, it took no measures for her security." "The witness also suspected that the killings could have been planned and designed by the Unified Command Structure itself with or without the knowledge of the Central and State Govts. Asked to elaborate, in cross-examination the witness said that "on various days before killing of Phuleswari Das and other members of her family, police, CRPF and army went to their house on various nights raided the same ransacked the articles in their house and had thrown them away putting various questions to

the inmates and ordered them to pursue Deepak Das alias Mithinga Daimary to surrender and come to the main stream. Then Dr. Dharanidhar Das, elder brother of Mithinga Daimary was brought to the S.P.'s office, Nalbari on various dates and he was also asked to pursue Mithinga Daimary to surrender before the Authority". Deepak's father Khagen Das, since deceased, was also brought to the S.P.'s office, Nalbari and similarly pressurized. Asked for detail he said that Mrs. Phuleswari told the witness, Dr Sunil Sarma and many responsible persons of Barana were told about her feeling of insecurity. People had seen an army camp of 5 Dogra Regiment (but personnel kept on changing. AT Hathkuchi, and the inmates of Phuleswari Das' house told the people that they were visited by army belonging to 5 Dogra Regiment and put pressure on her to for surrender of Mithinga Daimary. The ransacking of the house was said to have been published in newspapers with photos. Witness also alleged that when harassments were meted to the family of Mrs. Phuleswari Das "almost continuously protests were lodged and security was sought for from the district administration, but the district administration replied that it had been done under the instruction of the higher-ups of the administration." But they did not disclose the higher-ups.

About survivors in the family the witness said Mithinga Daimary, his younger brother Nitul Kachari, who was then studying at Pune, and a son of Dharanidhar and Rupjyoti, Bhaskar Das, then aged only 4/5 years.

This witness was thoroughly cross-examined both by Dr. Y.K. Phukan Senior counsel for the Commission and Shri P.K. Musahari, the learned Senior Govt. Advocate, Assam, but his evidence could not be shaken.

P.W. 2 Dr. Sunil Ch. Sarma, aged 53 years is a Lecturer in Assamese in Barama College. His Memorandum submitted before the predecessor Hon'ble Justice Meera Sarma Commission, on his prayer, treated as one submitted before this Commission. He was also thoroughly cross-examined by Mr. P.K. Musahari, the learned Senior Govt Advocate, Assam; and he stood it well. He emphasized that his Memorandum was for the Adyasraddha Udjapan Samity and it truly reflected the protesting voice of the people of Greater Barama area; and that thousands of people attended the public Sraddha ceremony and their representatives prepared the Memorandum. However, we concentrate on the factual aspect. Witness testifies that Dr. Dharanidhar Das was a qualified medical practitioner and was serving as the District Leprosy Officer, Nalbari district, and otherwise also a very popular and literary figure of Barama area, and served as the Secretary of the Nalbari district Sahitya Sabha. Mrs. Rupjyoti Das was serving as a teacher for some time, otherwise a beautiful and respected housewife. Smt. Latika Das was an educated and cultured girl about to enter her profession. P.W. 2 believed that such an incident could not have happened without the consent of the then Chief Minister, Assam, Shri prafulla kumar Mahanta; and in conspiracy with the State Govt, the Unified Command Structure, the police and the SULFA. To a question about Dr. Dharanidhar Das having a threat perception, replied that on 11.8.98 Dr. Das came to know, after reading the news paper about killing of Dimba Rajkonwar of Dibrugarh Dr. Dharanidhar told the witness that his (Dr's) own life and the lives of other members might similarly be as insecure as Dimba Rajkonwar's.. On the witness' suggesting that he should live elsewhere, Dr. Das told that he would stay at his home that night and would go elsewhere the next day, This was corroborated by Kalikanta Das P.W. 3 who said that on the eve of the incident he did not hear anything about the presage, but after the incident it spread from mouth to mouth that Dr. Dharanidhar had the presage that he might be killed so that he would have taken shelter elsewhere, but as his father Khagen Das went to Manikpur block, so he could not go to take shelter elsewhere leaving the house without any male person., Alas, destiny took its toll that very night

P.W. 6 Ram Chandra Das said that with the army and the police he used to see some other unknown persons moving with them and some such people also visited the house of Mithinga

Daimary before the incident. Those were known to have been SULFAs. He also agreed that this might amount to constituting these people into an extra-constitutional authority. P.W. 7 Shri Nagen Ch. Das deposed that Mrs. Rupjyoti Das was also pressurized by different Govt agencies and she also had the feeling of insecurity and accordingly reported to Barama police who took no step to allay her fear of insecurity. P.W. 8 Mr. Khanin Ali Patgiri, a colleague of Dr. Dharanidhar Das in Barama Sahitya Sabha said that two days before the incident Dr. Dharanidhar Das, seeing policemen all around and also seeing some unknown people among them expressed that he was afraid that some steps might be taken to finish them. The witness cautioned him not to move about as he was earlier picked up by the CRPF and the military. The gist of P.W. 9 has already been stated.

An important witness is N.W. 1 Shri Apurba Jiban Barua, the then S.P, Nalbari district whereunder Barama then fell. His frank and frugal testimony, when cross-examined by Mr P.K.Musahari, the learned Senior Govt. Advocate, Assam, was helpful in many respects. According to him during his tenure (1997- 1999) there were several extremist groups operating in Nalbari district, namely, the ULFA, NDFB, BLTF, PDF, BTF, Cobra and some Gurkha group were active. Their internecine relationships were criss cross and their networking complicated, rendering the situation volatile. The task of bringing amity between the ULFA and NDFB was difficult because both of them demanded separate sovereign states, and were guided by separate NSCN factions, ULFA by the Khaplang faction and the NDFB by the Isaac-Muivah faction..Witness said that when some ULFAs surrender and become SULFAs, they needed security and protection against their erstwhile ULFA colleagues; and that scope of ULFA-SULFA clashes persisted, and so, inspite of such protection and security provided by Govt, some of them were killed. Witness did not state anything about both the ULFA and SULFA being conducted by a common superior.He stated that Govt. provided security and protection to SULFAs and in deserving cases P.S.O.s were also provided, as for instance, to Shri Abinash Bordoloi of Nalbari, but unfortunately, he was also killed. Witness was not sure as to whether Abinash Bordoloi surrendered before or after this incident.

While Mr. Barua said that it would not be correct to say that the SULFAs were utilized by the Police, "nevertheless Police used to take some informative guidance from SULFAs for the purpose of the maintenance of peace in the society." Regarding Police taking services of SULFAs as source, answer was that "normally the SULFAs were not to be exposed by the Police. But, certainly in particular occasions where they could provide some information and guidance in specific important cases, police used to take the benefit of their services without endangering their lives." Mr. Barua could not say whether the army and the CRPF also did the same.Mr. Barua admitted that in appropriate cases the SULFAs were being used by police as informers and guides.

As in evidence several witnesses stated to have seen some unknown persons moving with policemen, Mr. Barua was asked as to whether the Police Act of 1861 provided for appointment of Special Police officers, his reply was "yes", but he did not remember if any such appointments, of SULFAs or otherwise, were made in Nalbari district. By his time some fifty plus important ULFAs surrendered in Nalbari district and police maintained a list of them. They were provided package for livelihood centrally from Dispur.

Mr. Barua said that before 13.8.98 no check-posts were set up at Akhra Chowk on the east and at Kadamtala on the west of Barama for Independence day. As there was no threat perception on Mithinga Daimary's house even after the news of Killing of Dimnba Rajkonwar, elder brother of ULFA Chief Arabinda Rajkhowa, and, witness said, there were no such requests from the members of the family; and further that Area Domination scheme did not cover the area where Mithinga Daimary's house stood. Though that scheme also covers the incidence of crime, moving around and trying to cause harm, but in view of the limited nature

police force, it was not possible to provide Area Domination covering the entire district or an area of a particular police station, unless, of course some information or such imminent insurgent activity is received.” he said. He did not agree with the suggestion that because of not setting up of check-posts at Akhra Chowk and Kadamtala, Barama area was left free for the miscreants to move freely, commit crimes and escape undetected.

As regards investigation, witness supervised the investigation but no footprints/ fingerprints were taken no apparatus were used. No dog squad was pressed into service, the explanation being that due to heavy downpour use of such measures could not be made. No motive behind the murder could be ascertained, and no enmity with anyone could be known. Witness said that during his tenure there were no reports of SULFAs creating trouble, “in view of the fact that the SULFA boys were under our control and in as much as we did not allow the SULFA boys to go and create public nuisance or any sort of disturbances.”; and the SULFA boys who surrendered and came overground were under our surveillance as well.”, but no surveillance register was maintained in their case..but said, surveillance could be effectively maintained without any register. “We kept some highly vulnerable SULFA boys in the police reserve areas only for their protection and rehabilitation purposes as the direction came for doing so from the Govt.” Of the vulnerable SULFAs he could remember only Abinash Bordoloi who, later was killed after his (Barua’s) transfer on 2.3.2000..

About unsatisfactory progress of the case witness said:”In view of the fact that no clue was found on investigation of the case, in one sense it could be said that the progress was not satisfactory, but the investigation proceeded for finding a clue “; and “in view of the fact that eye witnesses were not available and the public opinion did not come forward and in absence thereof we found it difficult to find any clue and nothing further could be done and we kept the case pending.” In reply to a statement that the witness was close to the then Chief Minister, Shri Prafulla Kumar Mahanta, the witness said that he was educated at Shillong and as such not associated with the AASU movement and that he never personally met the Chief Minister before he was posted in Nalbari, and further that it was only because no other officer was willing to, he was posted in complicated Nalbari district. The fate of investigation, it is noted, was not dissimilar to those of other cases under enquiry.

Attention of the witness being drawn to a statement that police should not have used the SULFA boys in countering terrorism, witness replied:” We do not use the SULFA boys in countering terrorism. Of course we do collect intelligence from them as regards the activities of the ULFA, their hide-outs, in foreign countries, their linkmen in India and abroad, their sympathizers within the country and the people who were sponsoring them In fact, under the scheme laid down by the Govt. we tried to rehabilitate them in their lives.” He said.

Attention of the witness having been drawn to a case diary noting made by the I/O in Barama P.S. Case no. 76/98 (instant case) to the effect that the crime was perpetrated by some SULFA men, witness replied that he saw it for the first time, he discussed the matter with I/O, asked him about its basis, applied his mind to it, and instructed to take necessary steps to finalise clue.. Asked about a news item saying that Mithinga Daimary’s father Khagen Das suspected the army to have committed the crime, witness said that it was an individual’s perception, and even so, he discussed the matter with the Commander of the Battalion who also asked as to who perpetrated the crime and how the army was involved.

N.W. 2 Shri Ranjan Bhuyan, the then Dy.S.P. Nalbari did not supervise the investigation of the case as it was not allotted to him. He was aware of some ULFAs surrendering at Nalbari; and the surrenderees were given rehabilitation packages and they were sheltered within the Nalbari Police reserve and allowed to occupy quarters meant for non-gazetted police officers and constables; and that about 40/50 such quarters were occupied by them. Some of the occupants were Sri Abinash Bordoloi, Shri Dilip Kakoty, Shri Satyen Barman, Shri Nitu Datta,

Shri Bikash Dutta, etc. The SULFA occupants of police quarters ran a mess for themselves. The movements of these occupants was controlled within the reserve, but not outside except that the reserve gates were closed by 8/9 P.M. No Movement register was maintained. No permission was needed to go out and to re-enter. They ran a co-operative society on a plot of 100 bighas of Govt land between the later part of 1999 and early 2000 for their livelihood. Abinash Bordoloi was admittedly killed in that farm. Witness gave the sheltering date to be middle or later part of 1999 approximately, but did not say that there were none in later part of 1998. The SULFAs were allowed to use police vehicles driven by police drivers on some occasions. Witness disagreed with the suggestion that Nalbari Police reserve SULFAs committed the Barama killings on 12.8.98. The O.C. said that patrolling the roads and bridges of Barama started before 12.8.98, but there was no report of anything important. He did not remember to have received any report from the V.D.P which was detailed for patrolling throughout the night of 12.8.98, but" may be a day or two after 12.8.98 received the information that at about 1.00 A.M. on 12.8.98 when it was raining heavily 2 or 3 small vehicles crossed the Akhra Chowk from west to east and coming back from the Barama side. When they were asked about the particulars of the vehicles they said that it could be 3 or 4 small vehicles Maruti vans sped away from Barama side to Nalbari side. The VDP comprised of Sukha Pathak, Ramesh Barman, Sarbeawar Barman, Anil Barman and Khagen Das. All from the village of Akhra Chowk as stated by Gopal Barman at page 58 of the case diary."

Arms and ammunitions used. Ascertainment of the types and calibres of arms and ammunitions used in commission of the crime may also lead to some clue. In this case the material exhibits have not been sent for forensic/ ballistic experts. The O.C. has stated that .32, .38 revolvers, and .9 mm pistols were used; and that all these three are restricted weapons. By "restricted", he perhaps, meant "prohibited" weapons. Section 7 of the Arms Act, 1959 provides: Prohibition of acquisition or possession or of manufacture or sale of prohibited arms or of prohibited ammunitions. - No person shall-

- (a) acquire, have in his possession or carry; or
- (b) manufacture, sell, transfer, convert, repair, test, or prove, or
- (c) expose or offer for sale, or transfer or have in his possession, for transfer, conversion, repair, test or proof, any prohibited arms or prohibited ammunitions unless he has been especially authorized by the Central Government in that behalf.

This Act provides for issue of licences for .12 smooth bore shot guns, air rifles and .22 bore rifles for protection of crops and/or sports or target practice, as the case may be. That means .32, .38 revolvers and .9 mm pistols are not to be issued to general public, but only to those specially authorised. by the Central Govt. in that regard.

Section 13 of the Act provides for grant of licenses. Under sub-section (3) thereof the licensing authority shall grant -

- (b) a license under section 3 where the licence is required -
 - (i) by a citizen of India in respect of a smooth bore gun having a barrel of not less than twenty inches in length to be used for protection or sport or in respect of a muzzle loading gun to be used for bonafide crop protection

Provided that where having regard to the circumstances of any case, the licensing authority is satisfied that a muzzle loading gun will not be sufficient for crop protection, the licensing authority may grant a license in respect of any other smooth bore gun as aforesaid for such protection; or

- (ii) in respect of a point 22 bore rifle or an air rifle to be used for target practice by a member of a rifle club or rifle associated licenced or recognized by the Central Government;

(b) A licence under Section 3 in any other case or a licence under Section 4, s, Section 6, Section 10 or Section 12, if the licensing authority is satisfied that the person by whom the licence is required has a good reason for obtaining the same. under section 5

Modi in his Medical Jurisprudence and Toxicology, Chapter XII dealing with "injuries by Mechanical Violence, gives an introduction to firearms and ammunitions. Under smooth bored firearms he includes Shotgun, which, he calls a shoulder arm having barrel that is smoothly bored inside and is intended traditionally for firing of a charge composed of one or more round lead balls or pellets of varying size. Rifled firearms have spiral grooves cut upon the inner surface of the bore to impart rotatory motion spinning in the longer axis thereby stabilizing the projectile thereby ensuring greater accuracy of impact and longer range. A rifle is also a shoulder arm designed to hit targets at longer range.

A pistol is a hand-gun in which the cartridge is directly loaded into the chamber of the barrel to distinguish it from a Revolver in which the cartridges are loaded into a rotating cylinder (or drum) in the rear of the breech of the barrel.

In Air Rifles and Air Pistols compressed air is used to fire lead slugs.

Jhala & V.B. Raju's Medical Jurisprudence, 4th ed., Chapter XXXII (p.316) says that "a fire-arm is capable of producing different types of injuries in different ways depending on proximity of or distance of the firearm, the type of the fire-arm and the type of tissue encountered, that is, the region of the body. Actual identity of the fire-arm is the job of a ballistic expert. But the forensic medicine expert has to know the specific type of injuries by various common types of fire-arms used."

Neither Modi, nor Jhala & Raju has dealt with the prohibited arms question. But HWV Cox Medical Jurisprudence and Toxicology, 7th ed. Chapter VII, while discussing injuries (p.454) under Rifled weapons says. "Rifled weapons are commonly encountered in military and police situations," and also high-powered hunting weapons designed for large animals. They are also employed in the air-rifles, weapons powered by compressed air provided by spring loading, with a caliber of 0.177 or 0.22 inches" There is, thus, an indication that rifle bored firearms are associated with police and the military.

At p. 464 the types of rifled weapons are described as under:

Revolver. The revolver refers to a common type of hand gun in which a number of cartridges with bullets inserted into their neck are rotated in a metal cylinder, so that a new one is brought into line with the barrel each time the trigger is pulled. The revolver tends to have a relatively low muzzle velocity of the order of 500 feet per second. The diameter of the barrel indicates the size of the revolver and common types are 0.45, 0.38, 0.32. or 0.22 inches. A revolver cartridge may be recognized by the fact that the base has a projecting rim which holds the cartridge in place in the cylinder. The bullet is frequently of lead without any jacket of a harder metal.

Automatic pistol is more correctly called a 'self-loading pistol' as instead of a rotatory movement as in the revolver, part of the gas pressure of each discharge is used to bring up a new shell into the breech. The new shells may be contained in a clip either in the stock of the gun or in a separate magazine. The automatic cartridge case does not have a projecting rim but a groove around the base where the ejector grips the shell case. Automatic pistols have many calibers, but those such as the Mauser, Beretta, Luger, etc., are calibrated in millimeters, commonly, 7.65 mm and 9 mm. The muzzle velocity of an automatic is greater than that of a revolver and may approach 1000-1200 feet per second. The use of prohibited bore weapon may be indication of military/ police agency in commission of crime.

On 16.8.98 O.C., Barama by W.T informed S.P. Nalbari that it had been ascertained that on the date of occurrence some persons in two white colour Maruti cars came from 'Ghti' side and after committing crime within 15/20 minutes fled away again by the said vehicles. The

O.C. also requested S.P to carry on his enquiry to find out the vehicles and miscreants; and said that it was strongly suspected that some SULFA members were responsible for the crime. The C.D of Case No. 76/98 u/s.448/302 IPC r/w s.27 of Arms Act. shows that the I/O gave a message to all O/Cs of Guwahati city and Kamrup for enquiry and necessary action. The O.C. Barama P.S. on 15.12.99 issued a statement "To whom it may concerned" *inter alia* that :

"During course of investigation it came to light deceased Doctor Dharani das was the elder brother and deceased Phuleswari Das was the mother of ULFA member Deepak Das @ Mithinga Doimary, the central publicity secretary of ULFA, and the hands of suspected SULFA is suspected to be involved in the case. The case is under investigation and is pending for to trace out and arrest of involved accuseds"

The I/O accordingly suspected the involvement of SULFAs in the crime; and considered the case as sensitive. The supervisory note of A.T.V. Krishna I.P.S., S.P. Nalbari dated 14.7.2000 shows that he treated the case very sensitive; and, on I/O.s note, said that white Maruti vans were used by the killers, who were suspected to be SULFAs. The S.P instructed I/O. to: ascertain from which side the vehicles came and whether any villager noted their registration numbers; ascertain the SULFAs that surrendered before the incident; ascertain whether Deepak Das @ Mithinga Doimary had any personal rivalry with others of SULFA cadre; ascertain from surrounding districts police stations whether they saw two white Maruti vans in the night of occurrence; ascertain from Nij Juluki villagers if the victim family received any prior threats to their lives; verify whether the news paper reports of ULFAs attacking some SULFA houses in retaliation of this incident and collect those case numbers to ascertain which areas were patrolled by Barama police that night and if there could be inputs therefrom; ascertain whether some ULFAs surrendered after the incident and whether they could provide any clue. I/O was to submit report within 2 months. This showed that the SULFA retaliation hypothesis was being probed, but not yet established. No record of its being established is available on records..

At the hearing Mr. S.C. Khound the learned counsel for Mr. P.K.Mahanta made two submissions. First, that this commission has no jurisdiction to enquire into the matter inasmuch as the deployment of armed forces of the Union is there and the Unified Command Structure is involved; secondly, that there is no direct allegation of Shri Mahanta himself being directly involved in any of the killings, and, thirdly, that if an officer or two of the police department is found negligent or guilty in non performance of his duties properly, the Minister cannot be held liable. The question of jurisdiction was already disposed of earlier in an application made to this Commission. The Full Bench decision of the Gauhati HpgH Court holding that in case of deployment of armed forces of the Union also the High Court has jurisdiction to appoint an Inquiry Commission. The subject matter of this enquiry is 'killing cases and finding out the killers thereof.' The Unified Command Structure is not necessarily involved in the enquiry. The fact that in some affidavit from witnesses the Unified Command Struture is alleged to have been involved, and nothing more, the jurisdiction of the Inquiry Commission cannot be challenged on that ground.

The second submission of Mr. Khound is a question of fact. Counsel has used, perhaps cautiously, direct allegation against Shri Mahanta himself, and of being directly involved in any of the killings. These will be questions of fact to be decided on basis of evidence on record. However, the Commission is required to find out who are directly or indirectly involved. There is also the question wheher there was any conspiracy in the killings. This was not covered by the submission.

The third submission appears to be examinable, and shall be examined along with other facts. When one or two police officers are found wanting, the Hon'ble Minister may not be blamed. However, if in all the cases under inquiry common deficiencies are found, it has surely to be seen as to whether it was due to some common facor or authority behind all.

As regards the series of Enquiry Commissions, the appropriate Government is vested with the jurisdiction to appoint or not to appoint a Commission of Enquiry under the Commissions of Inquiry Act 1952. It is also within the jurisdiction of the appropriate Govt to accept or not to accept a report submitted to it by the Enquiry Commission appointed by it. In *Boarder Security Force v, State of Meghalaya*, reported in AIR 1989 Gauhati 81 a Full Bench of the Gauhati High Court held that even where there is deployment of the armed forces and other forces of the Union in aid of civil power, the State Government has the jurisdiction to appoint a Commission under the Commissions of Inquiry Act, 1952; and that such deployment could not be without a requisition or consent of the State Govt. The B.S.F. contention that its conduct in course of deployment in a State could not be enquired into a State appointed Commission was rejected by the Full bench and this decision holds the field. There is, therefore, no question of staying the proceedings without any specific order from the Apex Court wherein a writ petition is stated to be pending.

P.W. 2 Dr Sunil Chandra Sarma, a Lecturer in Barama Collrgr, filed an affidavit and earliera memorandum before Hon'ble Meera Sarma Commission, in cross replied that he had very good relation with Dr. Dharanidhar Das and that on 11.8.98 he came to know that after reading news paper report of killing of Dimba Rajkonwar Dr Dharani Das told him that his own life and the lives of the other members of his family would similarly be insecured as that of Dimba Rajkonwar; amd that on the witness suggesting that he should live elsewhere, Dr Das replied that he would be in his house that night and go and live elsewhere next day. but as destiny would have it, his family were massacred that very night. The witness answered that the police after the killings did not carry on proper investigations and suspected that the Chief Minister might have a hand in the killing as it was during his tenure that such killings multiplied. P.W. 3 Kalikanta Das, the informant, stated that after his death everyone of the village said that Dr. Dharanidhar Das had a presage about his end and told his friends that he would like to have gone to some other resort to stay during the night, but could not do so as his father being away the family would be without a male member at night. The basis of the presage could be the killing of Dimba Rakonwar in the previous evening. P.W. 6 Shri Ram Chandra Das, a local businessman, dittoed that the Unified Command Structure includubg the Chief Secretary and the Chief Minister of the State were resplnsible for the killings; and that it was the result of the State conspiring with armed forces, the police and the SULFA to kill the members of the ULFA members' families in the State. In other words, it was an "ulfocide".

P.W. 7 Shri Nagen Chandra Das. Secretary, Barana Byabasayee Santha stated that the members of the family were constantly pressurized and the incident was at the instance of the Unified Command Structure. P.W. 8 Khanin Ali Patgiri, Secretary, Barama Sahitya Sabha said that he was close to Dr Dharanidhar Das who was the president of Barama Sahitya Sabha; and that two days prior tro the incident when Dr. Das came to encash a cheque of Rupees two lacs drawn in favour of the Sahitya Sabha, he expressed to the witness that many police people were roaming about and some mishap could befall on him at any moment, to which the witness suggested that if he would roam about like that mishaps might befall, hence he should not do so. Witness also stated that he agreed with the other witnesses that the killing was by conspiracy among different organs of the Structure and the SULFA were seen in company of police.

P.W. 9 Shri Nitul Kachari, younger brother of Dipak Das, was at Pune undergoing a course of cinematography. Informed about the killings he rushed back and reached home on 13.8.98. According to him, prior to the incident a Gypsy came to their house at about 7 P.M. located the house, noted its particulars and went back. At about 11 P.M. three gypsies came and stopped near Sarma hotel at Akhra Chowk and ate something therein. As the Independence day was to be celebrated on 15th August, security arrangements were already made at Barama, but on the night of incident (11.8.98) security was withdrawn by Barama O/C Dwijomoni Singh. Witness

did not state details of the killings, but said that after finishing it they came back to Sarma hotel and O/C Dwijomoni Sing also arrived there and asked the killers as to whether the work was completed. Dwijomoni came by a requisitioned bus as patrolling was lifted that night. as will be clear from the patrolling diary, if called. Witness then said:

"I believe that the killing in our family was in retaliation of killing of one sulfa Tapan Dutta by some at Guwahati a day or two prior to this incident. Ulfa claimed the responsibility of having killed Tapan Dutta and as my brother Mithinga Daimary was in the ulfa so they took revenge on the members of the family. One Jugal Kishore Mahanta a Sulfa member staying at Guwahati at that time spoke through his mobile from a doctor's chamber to another sulfa member Tirtha Bhuyan of Barpeta advising him that the members of the family of Mithinga Daimari should be finished." Mr. Jugal Kishore Mahanta in his deposition denied that he knew any doctor or chamber in the neighbourhood of Usha Court where he lived. He knew Shri Tirtha Bhuyan, but did not know whether or not he was present at Barpeta on 12.8.98.. Mahanta also said that there was some confusion about ULFA owning responsibility of killing Tapan Dutta who surrendered in 1992, as Mr. Jugal Kishore Mahanta himself did. and why should kill him in 1998 after six years. Thus the SULFA did not suspect ULFA in the killing of Tapan Dutta. Shri Mahanta also deposed that in 1998 the only Mobile service provider in Assam was the Reliance who did not provide STD facility in Assam in 1998, hence no question of his sending any message through mobile phone to Tirtha Bhuyan of Barpeta could arise. Mr. A.K.Bhattacharjee, the learned senior Advocate, for Mr J.K.Mahanta submits that on failure of P.W. 9 for cross-examination on the statement against J.K.Mahanta should be *non est*. No direct authority of the Supreme Court was produced. So far the direct statement about J.K.Mahanta the submission will be considered according to law. In so far as the other statements, if corroborated by other evidence received by the Commission through the judicial process will be dealt with according to law.

Shri Mahanta admitted that there was a rocket launched grenade attack on the Usha Court apartments, where he owned two apartments, and said that his family escaped by a hair's breadth and also that the DGP, the IGP, the IGP (Operations) Shri G.M.Srivastava and the DIG Shri Dilip Bora visited the Usha Court after the grenade attack. This would have given the idea as to the importance of Usha Court in then prevailing state of things. .

At the hearing Mr. A K.Bhattacharjee, the learned senior counsel appearing for Mr. Jugal Kishore Mahanta argued that since Mr. Nitul Kachari did not appear before the Commission for cross-examination on his statements affecting Mr. Jugal Kishore Mahanta, his deposition to the extent it affected Mahanta should be *non est*. No direct authority was shown in support of the proposition Counsel relied on.

P.W. 9 believed the story of ULFA claiming responsibility of killing Tapan Dutta to be true, and added that the three Maruti Gypsies used by the killers in Barama killing were white coloured, in new condition, and did not display number plates. Witness was thoroughly cross-examined by Dr. Y.K. Phukan learned Senior counsel for the Commission and Mr. P.K. Musahari, the learned Senior Govt. Advocate, Assam. Two main questions were not satisfactorily answered. The crucial basis of his evidence is the date of death of Tapan Dutta and its responsibility being owned by ULFA. These points may be clarified from departmental witnesses. Secondly all other witnesses deposed on a different hypothesis and whether there were enough materials to discard that hypothesis for this one. The question whether the two are mutually compatible may also be explored. May be, in the new set up of things Usha court had emerged as the SULFA headquarter and their orders emanated therefrom. But without proof beyond reasonable doubt no finding could be given...

Shri G.M. Srivastava, the then I.G.P. (Operations) was asked

Q.82. Did you know the killing of Dr, Dharanidhar Das, his wife Rupjyoti Das, his sister Latika Dazs Kachari, and mother Phuleswari Das on 12.8.98 out of which Barama P.S. case No.76/98 arose?

A. The police control had informed about the incident later.

Q. 83 Some family members and near relatives of ULFA members apprehended that there might be any attempt on their lives. Was it also a police perception ?

A. I do not think so

Q.84. Did in the mind of the District administration of police have such apprehension ?

A. I am not aware.

Q.85. In some areas rumours were widely spread that such incident might happen there. Was there any report from CID ?

A. I was in Gauhati and I was not aware if the people thinking in that manner in Nalbari and Barama areas nor anybody has informed me of such apprehension. It might be because of my being new since I had come after seven and half years deputation only in the month of April and I was still in the process of understanding status and the type of insurgency in the State of Assam which I tried my best to understand to perform my assigned role effectively..”

There seemed to be some difficulty in understanding the role of the I.G.P.(Operations) and later Addl. D.G.P.(Operations) as a Police officers and as a member of the Unified Headquarters and the Strategy Group of the Unified Command Structure. While Mr. Srivastava clearly answering:

Q. 28. Were you specifically entrusted with the control of any disturbance ? “

A. My task was primarily to provide with the approval of the D.G.P.required forces to the District S.P.s who were entrusted with the duties of maintaining peace to the area within their jurisdiction.

Q.29. “ Were you assigned any duty/responsibility to tackle with any situation by the D.G.P.?,

A. “My task was to provide adequate forces from available resources on demand to the S.P.s who were responsible and entrusted with the task for maintenance of peace and order within their jurisdictions.

Q.30. Were you a member of the Unified Command Structure as well as in the Strategy Group ?

A. Yes, as per Govt. notification.

Q.31. Were you required to present the requirement of the deployment of forces in specific areas in the meetings of the United Command Structure and State level Strategy Group?

A. Yes, as I.G.P.(Operations) it was my duty to apprise the House as also to place before them the requirement as received from various districts.

Q.32. Were your proposal before the United Command Structure or in the Strategy Group discussed and decided upon ?

A. Yes, as representative of the State Govt/ and State force, I used to details of the availability of force and future requirement which used to be discussed and suitable decisions were taken.

15. Creation of the Unified Command Structure. By Govt. of Assam Notification of the Govt. of Assam Political A Department, No PLA 271/95/223 dated the 24th Jamiary 1997, Order by the Governor ,”In pursuance of Government of India ‘s MHA’s Order No. T-7/ NS/97 dated 04.01.97 read with their Order No. T-7 /NS/97, dated 16.1.97, regarding Army operations in the State of Assam, the following committees are constituted to operationalise actions against militant groups / insurgents / extremists.

1. Strategy Group: A strategy Group headed by the Chief Secretary to the Government of Assam is set up at the State Level with the following members (There are XII members

headed by the Chief Secretary and including GOC Corps/ Chief of Army Staff 4 corps, Inspector Generals Operations, CRPF, BSF, and the seniormost representative of RAW. The Joint Secretary, Home & Political is the convenor and keeper of records and minutes.

2. Unified Headquarters: For operational purposes, a Unified Headquarters is set up with the following members: headed by GOC 4 Corps of the Army and including Director General of Police, Assam, the Brig. General, Staff of 4 Corps of the Army, I.G.P. Operations, Assam, I.G.P.s of (S.B.) Assam, B.S.F & C.R.P.F and representatives of SIB and RAW.

The terms of reference of Unified Headquarters would be: (a) To synergise counter insurgency operations conducted by Army, CPOs and State armed police including deployment and redeployment.

(b) to decide on modification of the areas of operations between the Army and the C.P.O.s vis-a vis the projected action plan. (c) To monitor the proceedings of the district level Co-ordination committees. (d) crisis management.

3. District Level Coordination Committee: The district level Co-ordination committees are constituted with six members headed by the Commissioner of Division as Chairman, and including the Deputy Commissioners, Superintendents of Police, Representatives of Army and para-military forces along with representatives of intelligence agencies as members. The Committees would function at the district level on the lines similar to that for the State Unified Headquarters.

4. This order would be reviewed at the end of three months from the date of the first meeting of the Strategy Group. This arrangement shall be deemed to have come into force from 20th January 1997.

The Unified Command Structure is, thus, not a statute or statutory order. It is no doubt an order passed by His Excellency the Governor of Assam creating arrangement of co-operation between the State civil power and the armed forces and other forces of the Union deployed in the State in aid of civil power. Its utility will come to an end when the utility of the deployment of armed forces and other forces of the Union will no longer be required. The declaration of the area as disturbed area is also to come to an end. That is why therein is the provision for reviewing it at the end of three months. Restoration of normalcy avoids declaration under Assam Disturbed Areas Act as also under the Armed Forces (Assam & Manipur) Special Powers Act. Even when the Disturbed area declaration is continuing, no civil or constitutional rights are *ipso facto* suspended, so that the Army alone or operating with civil or CRPF, cannot violate the fundamental rights to life and liberty of the citizens of the area under operation of the Armed Forces (Special Powers) Act, 1958 as amended. It was on this principle that a Single Bench of the Gauhati High Court in *Indrajit Barua V, State of Assam*, (AIR 1981 Gauhati 4) stayed the operation of Section 4 of the Assam Disturbed Areas Act, 1955 and section 4(a) of the Assam and Manipur (Special Powers) Act, 1958, as amended in 1972, was stayed.

This provision also clearly envisages the use of the armed forces in aid of the civil power. In aid of the civil power does not mean supersession, or in supersession, of the civil power. This provision is somewhat inconsistent with the federal structure, for it does not envisage any review or cessation of the order or decision by any judicial or impartial authority. It should not be that once a disturbed area will always remain a disturbed area. In view of the peaceful Assembly election having been held in 2006, the prevailing condition deserves a fresh look. The declaration as disturbed area can not be a substitute for President's rule. Thus a review will be consistent with the basic structure of our federal Constitution and any intrusion into the powers of a State and of its subjects will be violative of the basic structure of the Constitution and hence, *ultra vires*. The functions in aid of civil power have been ruled by

law, and not by discretion. However, no such law has been shown to have been enacted after the addition of Entry 2A, so that the same provisions alone are to apply. This is important because putting the civilians exclusively under the army *ipso facto* affects their civil rights and to that extent discriminated against without authority of law. In the absence of any other law the power of the Union in this regard may be confined to Article 355 on duty of the Union to protect States against external aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of the Constitution. So the Constitution itself provides the ultimate limitations as also guidelines for the State..

Mr P. K Bora I.A.S.(Retd) who was the Chairman of the Strategy Group at the State level of the Unified Command Structure stated in para 3 of his affidavit that the United Command was required to synergise counter insurgency operations conducted by Army, Central Police Organizations and State Armed Police Force. It was also to do crisis management and to monitor the proceedings of the District level Co-ordination Committees. In para 5 of his affidavit Mr. Bora stated that he presided over a number of meetings of the Strategy Group at the State level and that "These were no way involved in the 'secret killings' and this deponent does not believe that the United Headquarters were involved either. The preoccupation of the Unified Headquarters was to carry out operations against the insurgents and not against any member of their families." This statement remained unchallenged in cross-examination. However, "Operations" here does not seem to mean the "Operations" for the I.G.P. (Operations), as stated in cross examination above.

The purpose of quoting these laws and instructions is to enable ourselves to scrutinize the activities of the armed forces, if any, coming in evidence in the cases. Their Lordships of the Supreme Court in *Naga People's Movement of Human Rights v, Union of India*, reported in (1998) 2 SCC 109: AIR 1998 S.C. 431, which was a case on the Armed Forces Special Powers Act, 1958, held that possibly if such deployment takes place with the consent of the State, the power to control of such armed Forces will belong to Parliament under the present Entry. What is contemplated by the Entry 2A is that in the event of deployment of the Armed forces of the Union in aid of the civil power in a State, the said forces shall operate in the State concerned in co-operation with the civil administration so that the situation which has necessitated the deployment of the armed forces is effectively dealt with, and normalcy is restored. Restoration of normalcy is to be the terminus of the deployment. In aid of the civil power implies that deployment of the armed forces of the Union shall be for the purpose of enabling the civil power of the State to deal with the situation affecting maintenance of public order which has necessitated the deployment of the armed forces in the State. It has also been held that the expression "aid" postulates the continued existence of the authority to be aided. This would mean that even after deployment of armed forces, the civil power will continue to function. That means, it is not supplanted. The activities of the armed forces, if any, coming in evidence in the cases has to be weighed and balanced on these principles. It may not be correct to say, as has been said, that the State has nothing to do in this regard. That may mean abdication of constitutional power by the State.

N.W.3. O.C. Dwijomoni Sing in his Affidavit states that on 12.8.98 Shri Kali Kanta Das with the local Gaonburha Jatin Das lodged a verbal information to the effect that the aforesaid inmates of the house were killed and that their bodies were lying in bullet-ridden condition; they entered the house by forcibly opening the front (varendah) door of the house; "which was made of iron net in wooden frame; that "the door of the dwelling house was found unbolted indicating that the door was opened by the inmates inside; that on the pressure of the assailants," O/C also collected the following materials from the place of occurrence, Namely, (a) 10 No.s .32 empty cases; (b) One empty case of .38; (c) One misfired .32 ammunition, (d) one empty case of 9 mm; and (e) three No.s of fired bullet lids These showed at least three

different calibers firearms were used in the killings. To a question the O/C explained that three types of weapons were used, namely, .32 and .38 pistols and 9 mm revolvers, and that all the three are restricted arms, not permitted for general public. Cross-examined by Mr. P.K. Musahari, the learned Senior Govt. Advocate, Assam, O.C. Knew prominent ULFA leaders, namely, Nitul Kalita of Borjhar village, Shri Ugra Barman of Kharwajan village, and Abinash Bardoloi of Barsimulguri village. Abinash Bardoloi surrendered after the Barama incident. He also knew B.L.T leaders of Barama P.S. area Shri Bijoy Chowdhury and Mangal Boro, both from Kotobati village. He also knew the NDFB leaders Faguna Narzary of Bengalipara village and Naithab Boro of Dolbari village. All the above organizations were active and Barama P.S. which itself was once earlier attacked by extremists, was very sensitive but understaffed. Witness said the Independence Day preparations included patrolling the roads and bridges, the villages, guarding of national highway including bridges and culverts and other vulnerable places including Govt. offices. All under area domination scheme. Barama requisitioned CRPF, but no vehicles. For Barama Akhra Chowk was the eastern and Madhapur was the western entry points. for the occasion. Patrolling started ahead of the celebrations. .

To another question as to whether the army, the police and the P.S.O. s could get them, (the arms) he said that Army and police could get them, but in case of P.S.O.s it depended on the status of the persons to be protected and those were issued by the Police reserve and he could not answer the question. The O.C. said that he then examined Kali Kanta Das, (informant), Jatindra Nath Das, Binoy Medhi & ors and recorded their statements, but that none could give any clue. "Most of the witnesses including the informant stated to me that there was incessant rain at the time of the occurrence and they only heard very faint sounds of gunfire. They also heard sound of small vehicles going out from the place of occurrence", the O.C.'s Affidavit said. It also said in para 11 that "after completing all the preliminary formalities as described hereinabove I asked the informant Sri Kalikanta Das who earlier lodged verbal information at the P.S. to give a written ejahar and Shri Das accordingly submitted a written ejahar, stating the bare minimum facts, at Barama P/S. on the same day at 11 A.M." It was on basis of this ejahar the instant Barama p.S. case No.76/98 u/s.448/302 I.P.C r/w. S.27 of Arms Act is stated to have been registered, and the deponent (Dwijomoni Sing) himself had taken up the investigation. However, what would be the status of the earlier findings and the sketch map and the exhibits collected would be a different question.. the deponent reiterates that he, in course of investigation, "orally" examined several witnesses but none could give any clue. He also stated that as the Independence day celebration was imminent, "the police had to be on extra alert" and that on 11.8.98 night most of the vulnerable bridges were kept under guard by V.D.P. volunteers and a V.D. party under the local Gaonburha Sri Gopal Burman was detailed on bridge guarding duty at Akhra Chowk.; and a fixed party, manned by CRPF persommel was posted for the night hours to guard the bridge over Mora Pagladia on N.H. 31, In addition to the above, on the night of 12.8.98 one ASI with a CRPF party was detailed from the P.S. at 12.20 AM to check up the bridge duties and patrol over the vulnerable areas of the P.S. including the national highway and the party reported back at the P.S. at 2.35 P.M that it "did not find anything untoward during their patrolling, the bridges which were under police petrolling.

The O.C. said that police maintained surveillance over the house and family of Mithinga Daimari and over persons coming thereto and going thereout. But he could not explain how the quqdruple killing incident could happen despite such surveillance. To another question as to whether the Mithinga Doimari's family house was or was not also considered to be a vulnerable spot, the O.C replied in the affirmative, but could not answer how, despite that, the killing could be committed. The O/C also could not explain how the killing at night of

11/12.8.98 could not be detected despite the tight patrolling as stated in paras 15 and 16 of his Affidavit. He had no answer except saying that the assailants could cunningly evade the patrolling network.

Mr P. K Bora I.A.S.(Retd) who was the Chairman of the Strategy Group at the State level of the Unified Command Structure stated in para 3 of his affidavit that the United Command was required to synergise counter insurgency operations conducted by Army, Central Police Organizations and State Armed Police Force. It was also to do crisis management and to monitor the proceedings of the District level Co-ordination Committees. In para 5 of his affidavit Mr. Bora stated that he presided over a number of meetings of the Strategy Group at the State level and that "These were no way involved in the 'secret killings' and this deponent does not believe that the United Headquarters were involved either. The preoccupation of the Unified Headquarters was to carry out operations against the insurgents and not against any member of their families." This statement was not challenged in cross-examination.

Considering the law and the foregoing evicence in this case, those who actually shot and killed the four persons will be the perpetrators of the killings, and those who excited, abetted, assisted, helped and carried the perpetrators will be their accomplices. Identifying the killers is difficult, but suspicion is strongly on SULFAs, most likely from Nalbari or may even be from Gauhati. The suspected accomplices are all those SULFAs, Govt, agencies who excited, joined, facilitated, and instigated. the suspected perpetrator SULFAs in commission of the offence.

(C) Whether there was any conspiracy in targeting the victim and the motive behind such killing.

(I) Conspiracy in targeting the victim..Conspiracy. in the context of the instant inquiry, will mean criminal conspiracy as defined in Section 126A of IPC which is as follows:.

"when two or more persons agree to do or cause to be done :-

(1) An illegal Act, or

(2) An act which is not illegal by illegal means , such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explation.- It is immaterial whether the material Act is the ultimate object of such agreement or is merely incidental to that object..

Abetment of a thing. As defined in Section 107 of the Indian Penal Code (IPC)

" A person abets the doing of a thing . who-

First- instigates any person to do that thing; or

Secondly- engages with one or more other person or persons in any conspiracy for the doing of that thing. if an act or illegal omission takes place in pursuance of that conspiracy , and in order to the doing of that thing ; or

Thirdly, institutionally aids , by any act or illegal omission, the doing of that thing.

Explation -1. A person who, by willful misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures .or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.; or (Illustration omitted).....

Explation -2 Whoever either prior to or at the the time of commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act".

The law and jurisprudence of conspiracy has been discussed in para 10 of General part of this report; the same is referred to. The question whether there was any conspiracy or not in the killing of Smti Phuleswari Das, Dr. Dharanidhar Das, Smti Rupjyoti Das and Smti Latika Das Kachari has to be decided on the basis of the law, and facts in evidence on record. In case the answer is in the affirmative, then also the question will be as to who were the conspirators?. P.W. 7 Shri Nagen Chandra Das. Secretary, Barana Byabasayee Santha stated that the members of the family were constantly pressurized and the incident was at the instance of the Unified Command Structure. P.W. 8 Khanin Ali Patgiri, Secretary, Barama Sahitya Sabha said that he was close to Dr Dharanidhar Das who was the president of Barama Sahitya Sabha; and that two days prior to the incident when Dr. Das came to encash a cheque of Rupees two lacs drawn in favour of the Sahitya Sabha, he expressed to the witness that many police people were roaming about and some mishap could befall on him at any moment, to which the witness suggested that if he used to roam about like that mishaps might befall, hence he should not do so. Witness also stated that he agreed with the other witnesses that the killing was by conspiracy among different organs of the Structure and the SULFA seen in company of police.

(II) Motive. By the terms of reference we are to find out the motive of the killing. While the earlier witnesses appeared to have deposed that it was at the instance of the State Government the killing was done with a view to induce ULFA to abandon its insurgent activities, P.W. 1 Shri Bhaba Medhi, a member of the Baksa Press Club said in Examination-in-chief that "It is also believable ground that in order to bring the top leaders of the ULFA like Mithinga Daimary, back to the main stream, by weakening her mentally, and also in order to create an atmosphere of terror in the locality at that time, such a person of status as Smti Das may be targeted as the victim of such inhuman killing ..." P.W.2 Dr Sunil Sarma agreed that Mrs, Phuleswai Das, Dr. Dharanidhar Das, Mrs. Rupjyoti Das and Smti Latika Das were such people as would noway be liable to be killed except for their belonging to the same family of Deepak Das, alias Mithinga Daimary.

It is in evidence that Dr. Dharanidhar Das and other members of the family were requested by various Government agencies to persuade his younger brother Shri Deepak Das @ Mithinga Daimari who has been the publicity secretary of ULFA, and they were forewarned by them that in case of failure to persuade him (Mithinga) to surrender and join the peace talks and to bring peace, the consequences would not be good for the family, and the fact that Mithinga could not be so persuaded because of their having no contact with him resulted in killing of the entire family, obviously by those who forewarned them of not good consequences to the family on the fateful evening, there can be no other answer than that there was criminal conspiracy in the course of action culminating in the killing. by act of shooting. But there was a course of conduct involving the deciders of the course of action culminating in the killing. Considering the facts of this case in light of definition of conspiracy it can surely be held that there was a long drawn course of action amounting to conspiracy in the killing.

(II) Motive. While the earlier witnesses appeared to have deposed that it was at the instance of the State Government the killing was done with a view to induce ULFA to abandon its insurgent activities, Mithinga Doimari's brother Nitul Kachari (P.W.9) deposed on 28.3.2006 that the clue lay in the killing of SULFA Tapan Dutta on 10.8.98 at Guwahati and ULFA's claiming of responsibility for that killing whereafter one J.K Mahanta of Gauhati on a mobile from a doctor's clinic to one Tirtha Bhuyan of Barpeta to finish the family of Mithinga Daimary; and that with the active co-operation of Barama police and O.C. Dwijamoni Singh and G.M. Srivastava. and that coming by three Maruti Gypsies SULFA and Police did the killing. According to Nitul Kachari, earlier there was checking and patrolling by Barama police in Barama area, but there was no patrolling on the night of killing; and that O/C.

Dwijomoni Singh that day hired or requisitioned a bus and coming immediately after the killings asked the killers there whether the work was done. He further deposed that before coming to their house the killers entertained themselves with food and drink at that Sarma hotel near the Akhra Chowk. (consult and correct reading depositions.) O/C Dwijamoni Singh questioned the veracity of this evidence pointing out that Nitul was away studying at Pune at the time of occurrence and came home long thereafter, and hence, his evidence is simply hearsay. This objection is reasonable as the evidence is not direct. Besides, this hypotheses does not cover all the relevant events happening in the victim family of Mithinga Daimary after Mithinga joined the ULFA till the date of the killing incident. Mr. P.K. Mahanta also in his cross-examination denied this story. Any judicious finding on the motive behind the killings has to be based on reasonable analysis of all those events to understand the entire course of action culminating in the killings. Coincident or immediately following events may not always be for causal connection, As a logical example it is said that the fact that the child died immediately after the moon was seen in the sky hardly proves that the cause of the child's death is the emerging of the moon in the sky. Also sometimes it so happens that both the events are causally connected with a common antecedent event. In this case both the killing of Tapan Dutta and the killing of Mithings Daimari's family members may have been the results of some anterior events causally related to both. of them. P.W. 7 Shri Nagen Chandra Das, Secretary, Barana Byabasayee Santha stated that the members of the family were constantly pressurized and the incident was at the instance of the Unified Command Structure. P.W. 8 Khanin Ali Patgiri, Secretary, Barama Sahitya Sabha said that he was close to Dr Dharanidhar Das who was the president of Barama Sahitya Sabha; and that two days prior to the incident when Dr. Das came to encash a cheque of Rupees two lacs drawn in favour of the Sahitya Sabha, he expressed to the witness that many police people were roaming about and some mishap could befall on him at any moment, to which the witness suggested that if he roamed about like that mishaps might befall, hence he should not do so. Witness also stated that he agreed with the other witnesses that the killing was by conspiracy among different organs of the Structure and the SULFA seen in company of the police. P.W. 1 Shri Bhaba Medhi, a member of the Baksa Press Club said in Examination-in-chief that "It is also believable ground that in order to bring the top leaders of the ULFA like Mithinga Daimary, back to the main stream, by weakening her (Latika Das) mentally, and also in order to create an atmosphere of terror in the locality at that time, such a person of status as Smti Das may be targeted as the victim of such inhuman killing. P.W. 2 Dr Snil Sarma agreed that Mrs, Phuleswari Das, Dr. Dharanidhar Das, Mrs. Rupjyoti Das and Smti Latika Das were such people as would noway be liable to be killed except for their belonging to the same family of Deepak Das, alias Mithings Daimary.

Status Offence. It has been observed by Kenny in his Outline of Criminal Law, under the principles of criminal liability: "The religious doctrine that there must be expiation for sinful deeds was in accord with rules of criminal law as to punishment; but the religious sanctions, although by no means lenient, were varied to match the degree of moral turpitude which could be detected in the offence, and the spiritual courts were therefore primarily concerned with the mental ingredient with the commission of the of an offence." (pp. 12-14). It resulted in gradual recognition of a mental element in criminal liability which reinforced the ethical conception that it was not proper to punish a man criminally unless he had knowledge that he was doing wrong. Attention was thus more strongly directed to the mental element in crime, and the moral notion gradually crystallized into a rule of law. It ultimately became the best maxim accepted. St. Augustine had said : *Ream linguam non facit nisi mens rea*. In course of time it became the best known maxim of English criminal law when Coke expressed it *Et actus non facit reum nisi mens sit rea*. In this famous phrase there is a clear distinction

between a man's deed (*actus*) and his mental process (*mens*) at the time when he was engaged in the activity which resulted in the deed. This centuries old maxim has two necessary elements in crime, a physical element and a mental element and it makes plain that at common law no man may be found guilty of crime and therefore legally punishable unless in addition to having brought about a harm which the law forbids he had at the time had a legally reprehensible state of mind. It is therefore necessary that the student attempt to reach an understanding of these two constituent parts of criminal responsibility." This ancient doctrine that a man should be held responsible for anything which he could be proved to have done, led naturally to the converse idea that a man could incur no liability if harm resulted as a result of his doing nothing at all. This doctrine has persisted to the present day in so far that no one is held criminally responsible for the harmful consequences of his omission to act whether that omission be careless or intentional, unless the prosecution can prove that he was under a legal obligation to take action in the particular circumstances in which he was placed." (p.14) As Kenny writes: "It seems that with few exceptions no duty under the common law rests upon a person to take action to protect others unless he has directly or indirectly undertakes so to do" It is accordingly accepted that there is no guilty man without a guilty mind. In the instant case the victims Smti Phuleswari Das, Dr. Dharanidhar Das, Mrs. Rupjyoti Das and Smti Latika Das had no such obligation. Even assuming that coming under the exception "the duty which rests upon every citizen to aid and assist a police officer in the execution of the duty in order to preserve the peace when reasonably called upon, and reasonably able to do so," they made it clear to police and army that they had no contact with their ULFA Publicity Secretary Mithinga Daimary, and hence there was no question of their being reasonably able to persuade Mithinga to return to peace talks. In view of their reasonably being unable to do so, they deserved no punishment, far less capital punishment, under law, that too without giving them a reasonable opportunity of being heard.. Undoubtedly Status Offence is contrary to all these just canons of criminal law..

Phuleswari Das and other members of Mithinga Daimary's family were killed for their being members of this family of, as if, the "enemy of the people," as decided by the then authority in power; and executed by its agents and collaborators. Who else could execute it?..

By the terms of reference we are to find out the motive of the killing. Witnesses deposed that there could be no other reason for killing of Mithinga Daimary's family, namely, Phuleswari Das, Dr. Dharanidhar Das, Smti Rupjyoti Das (carrying five months) and Smti Latika Das except because they were members of the ULFA Publicity Secretary, Mithings Daimary's family. being his mother, eldest brother, Sister-in-law and sister, respectively. "Status offence." is reminiscent of some such provisions as to status offences in Stalin's Criminal Code. According to Glenville Williams-Textbook of Criminal Law (pp.36-7) means offences for status, without conduct. Offences of this type have been aptly called status offences, they are committed by people who find themselves with a particular label It is perhaps not within significance that status offences commended themselves particularly to tyrannical regimes; the Criminal Code of Stalin's Russia abounded with these, as for example the offence of being a relative of an enemy of the people. It means that Mithinga Daimary's family's offence was their status of a member of ULFA Publicity Secretary's family..

On 16.8.98 O.C., Barama by W.T informed S.P. Nalbari that it had been ascertained that on the date of occurrence some persons in two white colour Maruti cars came from 'Ghti' side and after committing crime went back same 'ghti' side. This confirmed the V.D.P. having seen two Naruti vans coming from Nalbari side and going back to Nalbari side after short interval when it was heavily raining.

(D) Pinpointing responsibility on persons involved directly or indirectly in commission of killing

This is the most difficult task of the Commission. In the absence of direct evidence, we have to depend on circumstantial evidence. That too is not forthcoming to such extents as could help us in pinpointing on the persons involved. Fortunately the term of reference mentions "involved directly or indirectly in commission of killing" This enables us to act on basis of integrated evidence rather than on isolated ones. We have therefore to integrate such parts of evidence as will lead to pinpointing responsibility. Besides what are found in relevant pieces of evidence, the common characteristics found in individual cases may also throw some light.

The following common characteristics of the first group of seven cases are found in this case. While answering its terms of reference so as to justify a finding of a general plan of "Ulfoside" i.e., deliberate killing of ULFAs, the members of their families and their relatives on their basis, namely:

1. This killing involved an ULFA family, namely, that of ULFA Central Secretary, Shri Mithinga Daimary and the investigation is pending but there is no clue..
2. These killings, like many others in this group, were committed at dead of night.
3. The assailants, in other cases, covered their faces with black wrappers and caps, to avoid being identified, but they spoke in Assamese. With the inmates.
4. The weapons used in killings were sophisticated firearms of prohibited bores and calibers, normally found in police-military situations.
5. That as firearms of prohibited bores were mostly used; forensic examination of exhibits mostly avoided. As in this case, or unduly delayed
6. That the vehicles used were mostly police like Maruti Gypsies & vans, and always without Registration No.s.
7. That there were police patrolling in the crime areas prior and posterior to, but not during the killings.
8. That the army was ubiquitous. There was lurking evidence of Police-SULFA nexus in the killings, some of the latter being constituted into an extra-constitutional authority and used as the executioners. the *modus operandi* being to visit the family, ask members to persuade its ULFA member to surrender, failing which, to send advance party to locate and survey house structure, then to send armed and masked persons to the family, knock at the door to wake up the inmates and then drag him/them out and shoot him/them dead, or take him/them away and secretly kill and throw the bodies somewhere. In this case as all the inmates were killed; there was none to report about.
9. There was general resentment and decry against the Unified Command Structure/ Chief Minister..
- 10 That there was connivance of SULFA; and omission of forensic examination of material exhibits. In this case suspicion against SULFAs was from all concerned, yet no action against.
11. That the investigation did not commensurate with the seriousness of the crime perpetrated..
12. The modern scientific methods of investigation, finger/foot prints, dog-squads were never used.
13. No condolence message was sent from the Govt. of Assam to the victim family
14. No ex-gratia/compensatory payment was made or offered by the Govt. of Assam in this case.
- 15 That in this case, death penalty has been imposed on "status offence," of being members of ULFA family of Mithinga Daimary, Central Secretary of ULFA.

16. From this case "remote orchestration" and principle of "kill and get killed" are deducible.

remote might be at Home. This conclusion is based on the similarities of the seven cases in all respects, which could not be so, unless there was remote orchestration from higher authorities. The remote was supposed to be at Home. The kill and get killed applied to a SULFA leader.

The Unified Command Structure. As there has been lurking evidence of the Unified Command Structure in every case, the Commission considers it appropriate to discuss it generally here, leaving the particulars to be discussed in individual cases.

Article 246 of the Constitution of India deals with subject matter of laws made by Parliament and by the Legislatures of State. It makes the following distribution of legislative powers:

Notwithstanding anything in clauses (2) and (3), Parliament has exclusive powers to make laws with

The following common characteristics are present in this killing.

It involves an ULFA family, that of Mithinga Doimary, Central publicity Secretary of ULFA. Its investigation resulted in report saying "the case is true, but there is no clue" The case is said to be still kept pending. The image of the army is visible, Dr. Dharanidhar Das and other members of the family killed, having been repeatedly pressurised by army men and policemen to persuade its ULFA member Mithinga Daimary to surrender and come for peace talks, despite Dharanidhar and other members of the family making it clear that they were unable to do so as they had no contact with Mithinga. They were also given to understand that failure to persuade Mithinga to surrender may not be good for the family. The killings also were at dead of night and sophisticated prohibited firearms were used in the killings. There was reluctance in sending the material exhibits for ballistic and forensic examinations. The investigation of the case was perfunctory, despite there being source reports that SULFAs were suspected, and despite the VDP having seen the two Maruti vans a little ahead of the killing turning south from Nalbari side to Barana and speeding back after about 15/20 minutes of the crime time towards Nalbari which could also mean Guwahati. There was also a long interregnum in course of investigation without any apparent reason. The material exhibits being empty cartridges, fired bullets, lids and surely indicated a police-military situation as stated in Cox's Medical Jurisprudence and toxicology. The question is who could be the actual persons. Though Mithinga's father suspected the army, there are not much evidence of their participating in the killing. Trying to persuade ULFA members to give up violence and come to peace talks could not *ipso facto* be found fault with. However, there is strong indication of Police-Sulfa nexus, the latter being mostly used as the striking arm. This indication was reinforced by the fact that the Nalbari district SULFAs were sheltered by police authorities in hallowed Sulfa camp including police quarters meant for lower rank police officers and constables. Though their movements were claimed to have been monitored, no reliable record thereof could be made available. The possible vehicles used were not obviously police vehicles, neither the SULFAs, except Shri Abinash Bardoloi owning a Maruti car, others were not known to have owned any Maruti Vans. There must have been some helping hands in this regard. The most glaring example of the arms and ammunitions used having been of prohibited category. Medical Jurisprudence and Toxicology clearly wrote that the like are encountered in Police-military situations. This also explains why the police investigators were palpably reluctant to send the material exhibits for ballistic and forensic

examination and report. The fact that the sources constantly informed that SULFAs were suspected, yet there was no definitive kind of investigation, apprehension and interrogation of such persons, On the other hand some sort of blanket protection for them was hinted at. In a crime of this nature and magnitude such implications may not be justified,

The Government did not send any condolence message; and did not pay any ex-gratia or compensatory payments to the family.

Regarding the SULFAs suspected, it may be appropriate to observe that because of the position in which the SULFAs found themselves, between the devil and the deep sea.. their erstwhile colleagues having been antagonised by their act of surrender, they deserved adequate protection. But using their services as "guides, "spotters". Trouble-shooters and cclaborators in police functions could never be viewed as proper treatment meted out to the SULFAs, far less their being used as the striking arm or the men in charge of the trigger. Let them now be bereft of the hallowed positions, and give them fair field and no favour, at least following the insolvency principle of allowing the declared insolvent to have a fresh start in life. How the erstwhile affected people will adore or avoid them will be a different matter altogether..

So far as the Government wings, agencies, and authorities, both official and political, the principle of "resposndent superior" will surely apply; and for all the lapses and misdeeds at the lower levels, higher authorities shall be held liable and be subjected to proper punishments. So far as political and minister level authorities are concerned, the principle of collective responsibility will hunt out all those who were forming Government in the State at the relevant period. This principle of collective responsibility will hunt them out wherever they happen to be, during the period following the violation of Constitutional and legal rights of the affected citizens whose fundamental and other legal and human rights were violated during their faulty governance. But even here the insolvency principle should be followed and the political insolvents also be given fair field and no favoue in the ensuing political process of the State. Let there be no withch hunting of any sort. How the same affected people will accept or reject them will, of course, be an entirely different matter..

(E) Recommendations to prevent recurrence of such killings.

With its limited knowledge, experience and wisdom, to prevent recurrence of such killings, the Commission would like to make twofold recommendations, namely, (1) the immediate and (2) the long term. (1)The immediate measure is first to, try to keep in abeyance and then gradually dismantle the existing Unified Command structure which is neither a statute nor an order, but only an arrrrrrangement agreed to by the Centre and the State Govt. regarding deployment and operation of the armed forces and other forces of the Union by the Central Govt, in aid of civil power of the State of Assam,. on request/ requisition by the State Govt. ; and the Central Govt. and the Assam Govt may agree to dismantle it in the same way they agreed to create it. The constitutional position as to deployment of the armed forces and other forces of the Union in a State has already been discussed in para 14 of "Part I. General" of this report and is referred to in this context. The deployment of the armed forces and other forces of the Union.in the State of Assam has been "in aid of the civil power of the State."In case of the civil power of the State being sufficient enough to cope with its civil problems, *ex hypothesi*, there is no need of armed forces or other forces of the Union for the State.. The armed forces and other forces of the Union were deployed to cope with the internal disturbance thought to have been caused by the activities banned outfits disturbing the are leading to its declaration as a disturbed area under the Disturbed Areas Act. However, the disturbance has to a great extent been under control. The life in the State has become normal. The last Assembly election could be held without any disturbance, thanks to the co-operation of the local banned outfits. This may be an appropriate time for effective talks with the local outfits to observe cease fire.first for a short period, say six months, and for gradually longer

and longer periods and for restoration of normalcy and confinement of the armed forces and other forces of the Union to the barracks and on continuation and assurance of ultimately withdraw, on an assurance of peace on the part of the banned outfits and ultimately lifting of their bans themselves. To achieve this, strenuous, but cordial, talks between the outfits, the State Government and the Central Govt would be necessary; and there is no reason why such talks should not succeed. Restoration of normalcy, Internal disturbance and insurgent activities by some units resulted in declaration of part of the State of Assam as "disturbed area" under the Disturbed Areas Act. This also gave an opportunity for application of the Assam and Manipur (Special Powers Act) invited the Unified Command Structure. It is in the hands of the people to assure that peace will be maintained and insurgent activities will be curbed and normalcy will be restored. If the public are serious in this restoration of normalcy, there can be no earthly reason why such a situation cannot be brought about by mutual co-operation of the State and its people. Modalities may be worked out in consultation and cooperation. Among the Government, the political parties, student organizations, the outfits and the general public. Restoration of normalcy will also effect economy. Meanwhile, in the interest of peace and tranquility, there should be no witch hunting. Constitutionally speaking, restoration of normalcy is the terminus of internal disturbances and army deployment. in the State So far as the Government wings, agencies, and authorities, both official and political, the principle of "responsible superior" will surely apply; and for all the lapses and misdeeds at the lower levels, higher authorities shall be held liable and be subjected to proper punishments. So far as political and minister level authorities are concerned, the principle of collective responsibility will hunt out all those who were forming Government in the State at the relevant period. This principle of collective responsibility will hunt them out wherever they happen to be, during the period following the violation of Constitutional and legal rights of the affected citizens whose fundamental and other legal and human rights were violated during their faulty governance. But even here the insolvency principle should be followed and the political insolvents also be given fair field and no favour in the ensuing political process of the State. Let there be no witch hunting of any sort. How the same affected people will accept or reject them will, of course, be an entirely different matter

(2) The long term measures are meticulous observation of the provisions of the Constitution and the laws. in carrying out each and every function of the government. All departments of the Government must function faithfully in accordance with the mandatory provisions of the Constitution of India. In other words, the **long term measures** may include, in the long run, the faithful obedience to, and implementation of, the Constitution and the laws of the country, The Centre-State relationship must also be in accordance with the mandates of the Constitution. Guidance of the famous Sarkaria Commission's report will be helpful in this regard. Manusmriti said (Buller) VIII, 351. "By killing an assassin the slayer incurs no guilt, (whether) he does it in public or secretly; in that case, fury recoils upon fury." 386. "That king in whose town lives no thief, no adulterer no defamer, no man guilty of violence and no committer of assaults attains the world of Sakra (Indra)"; 420. "A king who thus brings to a conclusion all the legal business enumerated above, and removes all sin, reaches the highest state (of bliss)" **Sukracharya's Dandaniti is based on danda**, meaning, punishment. Ancient sages said that without *danda matsyanyaya* will prevail and the strong will devour the weak, even the sacred *prasada* of the *yajna* will be swooped at by crows. *Danda* keeps awake when the country is asleep. All people have innate goodness in them, but some do not. In the absence of punishment those will demoralize others in the society. The norms and laws of today are not materially different. Secret killing amounts to denial of constitutional, legal and human rights to the killed, and violation of all these rights by the killer. If killing is by public authorities, it also means trampling over the oaths taken by them on assumption of public offices. The society need be protected from the people with

such propensities. It is trite learning that every action has a reaction, fury begets more fury, and that brutalities generate more brutalities. Continuous disturbance of the even keel of the society and some excesses committed by some element had to be checked by equally harsh measures, but that would not justify the lawfully established Government in abdicating its powers, duties and responsibilities to extra-Constitutional organs jeopardizing the legal, fundamental and human rights of the citizens of sovereign, democratic republic. Those who are entrusted by the people to govern them, ought to be well versed with the provisions of the Constitution of India and the relevant laws, rules, and administrative instructions, and orders framed thereunder. They should be aware of the constitutional limitations as also the rights of the citizens of the State against their State itself. Fundamental rights of citizens, including rights to life, liberty, freedoms, non-discrimination etc. must not be violated. They must never have propensity to kill the citizens they govern, secretly or openly. They must not harbour any kind of hatred or dislike on numerical, religious, communal, racial, ethnic, social, historical, or of any sort whatever. At the minimum they should be true to their oaths and be absolutely free from corruption in any form and manner.

While no training course will be appropriate considering their exalted position and prestige, periodical seminars and discussions at government level may refresh their knowledge and experience.

Regarding the SULFAs suspected, it may be appropriate to observe that because of the position in which the SULFAs found themselves, between the devil and the deep sea.. their erstwhile colleagues having been antagonised by their act of surrender, they deserved adequate protection, But using their services as "guides, "spotters". Trouble-shooters and ccollaborators in police functions could never be viewed as proper treatment meted out to the SULFAs, far less their being used as the striking arm or the men in charge of the trigger. Let them now be bereft of the hallowed positions, and give them fair field and no favour, at least following the insolvency principle of allowing the declared insolvent to have a fresh start in life. How the erstwhile affected people will adore or avoid them will be a different matter altogether..

So far as the Government wings, agencies, and authorities, both official and political, the principle of "resposndent superior" will surely apply; and for all the lapses and misdeeds at the lower levels, higher authorities shall be held liable to be dealt with under law. So far as political and Minister level authorities are concerned, the principle of collective responsibility will be applicable to all those who were forming Govtrnment in the State at the relevant period. This principle of collective responsibility will aapply to the persons involved wherever they happen to be, during the period following the violation of Constitutional and legal rights of the affected citizens whose fundamental and other legal and human rights were violated during their faulty governance. But even here the insolvency principle should be followed and in the interest of peace and tranquility in the society, the political insolvents also be given fair field and no favoue in the ensuing political process of the State. Let there be no withch hunting of any sort. How the same affected people will accept or reject them will, of course, be an entirely different matter..

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351. "By killing an assassin the slayer incurs no guilt, (whether) he does it in public or secretly; in that case, fury recoils upon fury." 386. "That king in whose town lives no thief, no adulterer no defamer, no man guilty of violence and no committer of assaults attains the world of Sakra (Indra)"; 420. "A king who thus brings to a conclusion all the legal business enumerated above, and removes all sin, reaches the highest state (of bliss)" **Sukracharya's Dandaniti is based on danda**, meaning, punishment. Ancient sages said that without *danda matsyanyaya* will prevail and the strong will devour the weak, even the sacred *prasada* of the *yajna* will be swooped at by crows. *Danda* keeps awake when the country is asleep. All people have innate goodness in them,

The Police department is the first resort of the people for protection of their life, liberty, property etc. Spreading disaffection towards police is an offence. Everyone has the duty to help police in restoring law and order in society. There is no doubt that our Police force is one of the best in the country. To make our police still more and more efficient and instructed, some officers, by turn, may be sent for advanced training in detection and decision in modern crimes and criminal practices. Such trained police personnel may be put in the police training College. They should undergo a training course in human rights and cyber and other present day crimes and crime prevention.

(F) Any other matter related or relevant to the inquiry

Under this term of reference the Commission has decided to discuss the "related or relevant" matter of adequate ex-gratia or compensatory payment to the family of Phuleswari Das, Dr, Dharanidhar Das, Mrs. Rupjyoti Das and Smati Latika Das commensurate with the losses and deprivations suffered by the surviving members of the family. We are all proud of our welfare State. In case of any mishap or calamity befalling any one or more of our citizens or families, the welfare State considers it to be its duty to render rescue and relief to the affected persons or families, as the case may be. It is more so when the sufferer has reasons to feel that the State itself was the immediate or even remote cause of the misery. The rendering of rescue, relief and recompense are irrespective of any fault on the part of the State. It is really praiseworthy of the Chief Ministers of the States of India to have instantly announced such reliefs and rehabilitation packages, and offer, in appropriate cases, employments to the surviving eligible members of the families, inasmuch as sometimes the very bread earning member is lost to the family. Even the Legislature has now provided for payment of suitable "no-fault liability" irrespective of the claim for fault liability. In the instant case all the four members of the family, and a quickening foetus, have been shot dead under the circumstances discussed in the case. The public prosecution may result in punishment of the culprits, but that itself will bring no financial and livelihood replenishment of the loss suffered by the survivors, including the minor children of the bereaved family. Only the youngest son, who was then studying elsewhere, Shri Dipak Das 2 Mithinga Daimary, and a grandchild are the survivors. There are no means of education and livelihood for the survivors. Accordingly, the Commission, as submitted by the learned senior counsel for the Commission and the learned Senior Government Advocate, Assam, and for the ends of distributive justice, doth hereby direct the State Government of Assam to pay, by cheque, into a bank account to the two survivors of the victim family, namely, son Nitul Kachari, Dipak Das @ Mithinga Daimary and the grandchild, Bhaskar a sum of Rs.20,00,000.(Rupees Twentylakhs) forthwith, getting a guardian appointed by the Court, to operate the bank account, and also take charge of upbringing and entire education of the grand child (son of victim Dr. Dhsranidhar Das) More than seven years have already elapsed, and it brooks no farther delay.

(3)

THE KIDNAPPING AND ATTEMPTED MURDER CASE OF

SHRI ANANTA KALITA OF HAJO

Basistha P.S, Case No. 224/99: Hajo P.S. case No. 155/99

By Notification No.PLA 331/2005/1 dated the 22nd. August, in exercise of the powers under Section 3 of the Commissions of Inquiry Act,1952 , hereinafter referred to as "the Act", the Governor of Assam has been pleased to constitute the Commission of Inquiry, hereinafter called the "Justice K.N.Saikia Commission of Inquiry," to inquire into the killings in 6 cases (of 11 ktlings); on the stated terms of reference; and subsequently by Notification No. PLA 331/2005/2 dated 3rd September 2005 it was notified that the Justice K.N.Saikia Commission of Inquiry shall also inquire into the alleged attempted murder case of Shri Ananta Kalita of Hajo and any other incidents of killing under similar circumstances which occurred within the period from January 1998 to 2001, on the same terms of reference. Accordingly the Justice K.N.Saikia Commission," issued the requisite notifications on the said case of Ananta Kalita of Hajo under the Act.

Procedure. In the absence of any Rules made by the State Government of Assam under the Act, the Commission decided to follow the Commissions of Inquiry Central Rules, 1972 *mutatis mutandis*. Notifications/Notices were issued under Rule 5(2) a, and 5(2) (a) & (b) and also under Sec. 8B of the Act and the Commissions of Inquiry Central Rules, 1972, hereinafter referred to as "the Rules", and received affidavits from the parties in response thereto. and heard the parties and their counsel, as and when appearing. The parties, including Govt., examined their witnesses who were also cross-examined by Commission's and opponents' counsel. The parties were given full and equal opportunities and the principles of natural justice were fully complied with. The first hearing session was held from 5th to 7th December 2005. Shri Ananta Kalita and his six witnesses were represented by counsel and so was the Govt. of Assam. The Commission was assisted by Dr. Y.K.Phukan, Senior Advocate, and Mr.Diganta Gogoi,, Advocate. The Government of Assam was represented by Mr. P.K.Musahari, Senior Govt. Advocate, Assam and Mr. Dhanesh Das, Govt Advocate and Additional Public Prosecutor, Assam.

The subject matter of inquiry being attempted murder of Shri Ananta Kalita, first question is what is an attempt? It is an offence at common law to attempt to commit any indictable offence, unless the nature of the offence is such as to make the concept of attempt inapplicable. Therefore, an attempt to murder by trying to draw a pistol upon the victim is an offence. Aiming at and firing a pistol at the victim with a view to kill him, but he survived, will be an offence of attempted murder. Section 511 of the Indian Penal Code provides:.

"511. Punishment for attempting to commit offences punishable with imprisonment for life or imprisonment. Whoever attempts to commit an offence punishable by this code with imprisonment for life, or imprisonment or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with imprisonment of any description provided for that offence, or with such fine as is provided for the offence, or with both."

This is a general provision dealing with attempts to commit offences. It makes punishable all attempts to commit offences particularly punishable with imprisonment and not those punishable with death only.

The question to be decided regarding this case, added by Notification dated 3rd. September 2005, is whether it can be treated as similar to the other cases notified earlier on 22nd. August, 2005. The learned Senior counsel for the Commission Dr. Y.K. Phukan and the learned Senior Govt. Advocate, Assam Mr. P.K. Musahari submit that it belongs to the same category as Ananta Kalita was earlier arrested suspecting him to have been an ULFA, and there has been no indication that he was otherwise, his belonging to AJYCP notwithstanding. The fact that Ananta Kalita was asked to join the Juba Parishad did not militate against his being treated as ULFA. This submission is considered reasonable and hence accepted; and the case is treated as same with other cases notified earlier.

The following are the common terms of reference:-

- “(a) Circumstances, in each case, leading to the killing of the above mentioned victims.
 - (b) Identity of the killer(s) and accomplice(s), if any.
 - © To find out whether there was any conspiracy in targeting the victims and the motive behind such killings.
 - (d) Pinpoint responsibility on persons who were involved directly or indirectly in the commission of such killings
 - (e) To make recommendations to prevent recurrence of such killings.
 - (f) Any other matter related to or relevant to the purpose of this inquiry.”
- Commission was assisted by Dr. Y.K. Phukan, Senior Advocate and Shri Diganta Gogoi, Advocate.

(A) Circumstances leading to the kidnapping and attempted murder of Shri Ananta Kalita of Hajo.

On 17.9.99 one Mantu Kalita, brother of Ananta Kalita, lodged FIR at the Hajo Police Station to the effect that some armed miscreants came in two vehicles to Ananta Kalita's Hajo Kalitakuchi village and forcibly, at gun point, took away Shri Ananta Kalita to unknown destination. On the strength thereof the Hajo P.S. case No.155/99 U/S 147/148/149/365 IPC was registered and investigated. On 19.9.99 injured Ananta Kalita lodged another FIR at the Bashistha P.S. on the strength whereof the Bashistha P.S. Case No.224/99 u/s.143/365/326/307 IPC r/w. s.25(i)(A)/27 Arms Act was registered. This FIR was to the effect that after midnight of 16.9.99 at about 2 A.M. as Ananta was sleeping in his Kalitakuchi village residence a group of 10/12 persons, coming by two vehicles, namely, one white Maruti Zipsy and a Tata Sumo, brandishing firearms, forcibly took Ananta away; and keeping him confined there till 18.9.99 midnight, the armed men took him to Jorabat police outpost wherefrom they, in the same vehicles, took him, in eyes and hands tied condition, to the crest of a hill where some armed people were already waiting. They made him, with tied hands, stand on the verge of the hill crest, and putting a small arm touching his head, and retreating one step backward, shouting “Down with Yuba Chatra Parishad” fired at his head whereafter he rolled the downhill precipice. He became unconscious. During pre-dawn hours he regained consciousness and feeling unbearable pain from his wounds he somehow climbed up the hill to the highway and being put on an auto rikshaw by a running truck-owner he arrived at the Jatiatabadi Yuba Chatra Parishad head office at Maligaon wherefrom the workers of the Parishad got him admitted into the Guwahati Medical College hospital wherefrom he was

taken to the Guwahati Neurological Research Center, Dispur. During the incident, he could recognize one Ramen Kalita of Sualkuchi

(B) Identity of the kidnappers and accomplice(s), if any.

The kidnapping and attempted murder of Ananta Kalita were secret as to identity of the kidnappers and of the murder attempters, and also as to the place of attempt to murder. It is a developed principle of law that accomplices are the parties to the crime. On the basis of degrees of complicity to the crime, accomplices are divided into perpetrators and accessories. An accessory is one who excites or helps the commission of an offence by the perpetrator. Perpetrator means exclusively the person who in law performs the offence. More precisely, the perpetrator is the person who, being directly struck at by the criminal prohibition, offends against it with the necessary *mens rea* or negligence.

Ananta made a statement before the Magistrate u/s 164 Cr.P.C. on 15.10.99 while he was still undergoing treatment for reconstructive surgery of his head and face in the Down Town hospital, Guwahati, being referred thereto by the Guwahati Neurological Research Centre, (GNRC), Ananta, consistently with that statement, deposed before the Commission that on 16.9.99 midnight when he and his parents and elder and younger brothers were sleeping peacefully at his Hajo, Kalitakuchi village residence, he woke up by the shouts of someone asking his elder brother as to where he (Ananta) was, and he heard sounds of assaults and beating and the persons and his Ananta made a statement before the Magistrate u/s 164 Cr.P.C. on 15.10.99 while he was still undergoing treatment for reconstructive surgery of his head and face in the Down Town hospital, Guwahati, being referred thereto by the Guwahati Neurological Research Centre, (GNRC), Ananta, consistently with that statement, deposed before the Commission that on 16.9.99 midnight when he and his parents and elder and younger brothers were sleeping peacefully at his Hajo, Kalitakuchi village residence, he woke up by the shouts of someone asking his elder brother as to where he (Ananta) was, and he heard sounds of assaults and beating and the persons and his In this case those who actually shot and injured Shri Ananta Kalita will be the perpetrators and those who kidnapped, confined, excited, assisted, helped and carried him will be the accomplices. Identifying the perpetrator will not be difficult because, as narrated by Ananta Kalita, the Subedar major (was called Major) was there. He was one Gupteswar Singh, now retired, to whom notice was sent and he replied to it, but could not appear, but suspicion is strongly on SULFAs. The suspected accomplices are all those Govt, agencies who excited, joined, facilitated, and instigated. the suspected SULFAs in commission of the offences As already said, the occurrence was at midnight and an FIR was lodged in the morning on 17.9.99 by one Montu Kalita, younger brother of Ananta Kalita at the Hajo P.S. whereupon the Hajo P.S. case No. 155/99 was registered and investigated. Three days thereafter Ananta Himself regaining consciousness lodged another FIR at the Basistha P.S., Guwahati whereupon the Bashistha P.S. case No 224/99 was registered, whereafter Ananta was taken to and admitted into the Guwahati Medical College hospital and after some treatment he was shifted to the Guwahati Neurological Centre (GNRC) for neurological treatment, and thereafter he was admitted into the Down Town Hosp[ital, Guwahati for further treatment. A statement of Ananta under S.164 of the Cr.P.C. was recorded by a Judicial Magistrate. Two criminal cases were proceeding simultaneously. The Hajo P.S. case No.155/99 u/s.147/149/365 IPC was closed after final report, but was subsequently revived after a note from higher authority. The record thereof was called for and was received by the Commission. The Basistha P.S. case No.224/99 u/s 143/365/326/307 IPC r/w s.25(i)(A)/27 Arms Act was called for and was received by the Commission which also collected the three medical reports from the aforesaid three hospitals. The contents thereof were subjected to judicial process, namely, the doctors and ballistic experts were examined and cross examined

The star witness Shri Ananta Kalita giving the genesis of the trouble said that the members of the Assam Jatiatabadi Yuba Chatra Parishad, hereinafter referred to as the "AJYCP", organized

the Singimari Multipurpose Agricultural farm, hereinafter referred to as the "Singimari farm", on a plot of Govt land and cultivated food crops therein. The Hajo police and Sualkuchi police, on either side of the farm, would not allow the farm to continue; and at one stage evicted the AJYCP members therefrom, ransacked it and destroyed the farm forever. Once it so happened that someone killed a cow at the farm and in that connection, on 7th March, 1999. Shri B.K. Nath, O.C. Hajo P.S. came to Ananta's house at midnight, saying that some local people lodged FIR against him; vandalized his house, and finding nothing incriminating, took him away and kept him in police lock up and making him sign a blank paper, released him so that he could attend to his old father who was a cancer patient.

Shri Ananta Kalita's main allegation is that the succeeding O.C. of Hajo P.S. coerced him to give up AJYCP and join the Yuba Parishad, which was the youth wing of the A.G.P. and, as he refused to comply, though he was innocent, he was mercilessly beaten, forcibly taken away from his house, confined in an illegal torture camp room and tortured with eyes and hands tied, and was taken to the crest of a hill and was shot at close range on his head

By notification the identity of the kidnappers and murder attempters are yet to be identified.. We discussed the meaning of "secret" in Part 1. Identification of the killers has to proceed on the basis of investigation and evidence. It appears from records that routine investigation proceeded on usual lines

Ananta made a statement before the Magistrate u/s 164 Cr.P.C. on 15.10.99 while he was still undergoing treatment for reconstructive surgery of his head and face in the Down Town hospital, Guwahati, being referred thereto by the Guwahati Neurological Research Centre, (GNRC). Ananta, consistently with that statement, deposed before the Commission that on 16.9.99 midnight when he and his parents and elder and younger brothers were sleeping peacefully at his Hajo, Kalitakuchi village residence, he woke up by the shouts of someone asking his elder brother as to where he (Ananta) was, and he heard sounds of assaults and beating and the persons and his elder brother asked him to open the door of his room and no sooner he did so, 3 unknown persons rushed inside his room, one flashed his torch at his (Ananta's) eyes, another slapped him on his cheeks, someone ordered me to dress up. and pulled out my bag from inside a drawyer, demanded and took the keys and opened his bag and took out his certificates; and no sooner he put on his pant and shirt, forcibly dragged him out to the Verandah, wherefrom he refused to go by grabbing at a post, one dealt some blows on him and holding tightly by his waist forcibly took him away to the street where a white Maruti Gipsy and a black Tata Sumo were waiting. They had short deadly weapons like guns in hand. A villager or two came out to the place, one holding a lantern which was smashed by one miscreant. He was held tightly and dragged into the Sumo. To his question as to where he was being taken, the reply was that he was to show someone's house. Both the vehicles then started. Suddenly one of the miscreants who came with asked Ananta to pull out his shirt and, when done, his eyes were tied with it. His hands were tied behind his back with a small scarf. Both vehicles proceeded, what Ananta could imagine, by the Ramdia-Sualkuchi gravel road, and that the leading vehicle may have developed trouble as it frequently sounded horn and halted. On way whenever the vehicles came across passers by, Ananta's head used to be pushed down. Someone said they reached the Bathan Thana near Sualkuchi. Both vehicles stopped there and Ananta could feel some getting down and some others boarding. Therefrom the vehicles negotiated a turning whereafter the vehicles stopped and driven back. to what Ananta could guess to be either a CRP or a Police Battalion camp. One from the driven back vehicle asked "*Murgi mil giya kya?*" meaning "have you got the chicken?" Reply from our vehicle was "*ha, mil giya*" meaning "yes, we have got". Therefrom the vehicles were driven fast. From the peculiar sound of vehicle crossing a bridge Ananta could imagine that it was the Brahmaputra bridge that was crossed. and that he was being brought to Guwahati. Crossing the bridge the driver asked which way to go. One of them replied "Proceed to Chanmari". Sometime thereafter Ananta guessed that the preceding vehicle was

checked by police and someone proposed that the troubling vehicle should be left at the Thana, another said, not necessary. The vehicles proceeded, he could guess that they crossed the Chandmari flyover and a little farther the vehicles stopped and they left behind the defective vehicle there and adjusted themselves into the Tata Sumo which proceeded farther ahead and stopped at a place. One disembarking me holding my ganzi, and others surrounding me, took me to the top of a hill and lodged me in a room of a house with my eyes tied and hands tied behind to a post.. He felt that there was another man confined close to him whose body was felt when he (Ananta) stretched his legs. While in the room he heard someone asking one Prabin Boro as to how was he; how many policemen he had killed, and how much money he had amassed and to which organization he belonged? The boy replied that he did not kill any, amassed no money; and that he was working with the NDFB Ananta was kept in the tied condition throughout the night and at dawn he heard sounds of passing vehicles. A man came and asked Ananta if he had call of nature. Ananta wanted to go to latrine He was led to latrine, hands were untied, eyes remaining tied. Thereafter he was brought back to the room and his hands were re-tied as earlier. A man, imagined to be a policeman talked in Boro language. Another person pointing at Ananta asked wherefrom he was brought. Someone replied: "This is not our case. It was brought at night only". The man who came earlier pinched Ananta's body said that it was a good body. Suddenly both slapped Ananta's cheeks. Another said: "Do not beat him because it is a different case and if something happen we will be held responsible". At noon Ananta's eyes and hands were untied and he was made to eat rice and dal and wash the dish thereafter. He saw the house has "tarja" (split bamboo) walls and he was allowed to urinate nearabout. I heard some pertaking Prasad of *Viswakarma puza* A drunken man, came and kicked Ananta $\frac{3}{4}$ times on his chest and asked him wherefrom he had come. This ensued exchange of hot words between two persons as to why everyday men were lodged in his room. The Major, as he was so called, consoled Ananta patting and asked whether he was injured and pained. He (the Major) said that military people had the habit of rebuking people. I was allowed to dine at night and one Battalion man asked Ananta if he would like some drink. He said no. His eyes being untied during dinner he looked around the room and saw the uniform hung to the wall. Thereafter he was tied together with Prabin Boro (whom he already knew) and kept in the same room blindfolded. At about 12 midnight some one asked Prabin Boro to get up as his time was up; and he was taken out of the room. Separated, I was asked to lie down on a bed, first with my tied eyes and hands, but later eyes untied. He was told by the boy who used to serve meals that the boy who was taken out (Prabin Boro) was finished, and that nobody could escape alive from that place. Ananta then asked the boy: "Shall I also be killed?" The boy replied: "Once one comes here it is difficult for him to return alive, but as no incriminating documents have been recovered from you, you may be let off tomorrow, The C.O. or the Major may do so" Ananta passed a sleepless night, and had his tea and bread and kept re-tied thereafter. Someone asked him whether he was married and he replied no. At about 10 A.M. he was allowed to take bath when he saw about 30/40 beds in the hall and 4 latrines outside. He was brought back and kept confined to the same place and condition. Two persons asked him whether he knew Ataur Rahman who was said to have forged certificates, and the other told him: "Why do you die like this?" On his asking as to what place it was, they said it was No. 10 & 13 Police Battalion's "Operation Centre". On 18.9.99 at about 8 P.M. a fat dark boy sat near Ananta and introducing himself as Fida Gogoi announced:

"I am the head of secret killers. I can kill you or save you as I like. We are the Govt. and we are also the killers There is none above us. We can let you off on one condition, namely, if you know, and can shoot down Rupjyoti Boro within two days."

Ananta replied that he knew Rupjyuti Boro as his house was in his (Ananta's) neighbourhood, but he had not seen Rupjyuti for one/ and half years. Next question was whether he knew one Sarania, and on his replying in the negative, the man said that: he would be killed that day as it would be of no use to keep him alive. When Ananta was served meal

thereafter, the serving boy advised him to take heavy meal as there was no certainty of his life that day. Then he heard 'Jai Hanuman' being telecast. A boy came and tied his hands. 3/4 persons entered his room and asked him to stand up, when he did so, his eyes were closely tied. Before that he saw a Naga dao being taken out from under the bed. Meanwhile two vehicles came and stopped on the street. He was brought out to the varendah and then led to one vehicle on the street and made to lie down on the deck behind the driver's back. The put some selected people aboard the vehicle. Both vehicles started the other preceding ours.. Stopping the vehicles at a point, one was heard whispering to another to invite "Sir" Another whispered Sir was walking. The vehicle was driven fast towards him. Ananta heard sounds of passing trucks.. Suddenly the vehicle stopped and he heard sounds of flowing water, might be from a small stream. By then it was 12 midnight. As the vehicle moved again someone uttered it was Palasbari Dwimukh and it would be better to take him to Chaigaon, but Ananta guessed that it was not chaigaon, as the road was circuitous and ascending to a hill top. The vehicle stopped. One whispered ait a bit, atruck is coming. The truck crossed, and I was taken out of the vehicle. He imagined it to be the destination. I was led by about 30 feet. They changed the ropes and tied him securely with new ropes and further tightened the knot tying his eyes. They asked him whether there was any written material or tattoo on his person or something in his pockets, but nothing was found. Then they put something, which he imagined to be the nozzle end of a pistol touching his left ear hole. Then the pistol was slightly pulled back as he started crying "don't kill me, don't kill me" Then the people shouted "Juba Chatra Parishad go to hell" and fired the pistol. What happened thereafter he did not know. A little thereafter Ananta felt that he was rolling downhill to bottom; regained senses, felt severe pain and thirsty. My eyes and hands remained tied ; and he felt that the bullet entered below his left eye and went out little below my right earhole. Blood was woozing out of all the wounds, his head was reeling and he felt extremely thirsty and literally shouted "water, water" for about an hour in vain. He tried to crawl by his back, heard the sound of a stream and crossed a banana plant and breaking it he fell into the stream and swerving his legs touched a rock and decided to pass the night leaning on it. He rubbed his hand bandage against the sharp edge and bandage snapped freeing his hands to untie his eyes and he kept the bandage scarf under his belt. He saw and drank lot of water and bandaged his bullet wounds with the eye bandage scarf. After some rest he saw the hillside being lit by truck lights downstream. He guessed the street was down there and crawled to roadside at dawn and lied down. A Maruti van came by the road and he signaled it to stop by his legs as he was unable to speak because of his bleeding bandaged wounds. The Maruti van stopped little ahead of him and two persons, one middle-aged and the other young, looked like Naga or Manipuri, alighted and asked, in Hindi, what happened Ananta said, in broken Hindi, dacoits brought him from Guwahati and caused the injuries. They said they were proceeding to Shillong. On request they stopped an empty coal truck, brought it near him and got him seated near the driver and took towards Guwahati. They took tea at a roadside hotel, gave Ananta a piece of cloth to rub his bleeding and gave him tea and cake. which he could not take being unable to open his mouth. They opened his mouth a bit and poured tea into. Then the truck reached Jorabat and stopped near Nilima Line Hotel signboard. They took Ananta up to Beltola and put him in a rickshaw and then to an Autorickshaw and the driver thrust a 10 Rupee note into his pocket. The Autorickshaw brought him to the Head office of the Juba Chatra Parishad at Maligaon, Guwahati. Ananta said that he was afraid that somebody might kill him, and that he identified Ramen Kalita @ Ramen Deka among the persons who brought him out of his house and was in the vehicle. All those who were in the vehicle were accomplices.

Notices under Section 8B of the Act were issued to the then Chief Minister, Assam Shri Prafulla Kumar Mahanta, the then Minister of Assam Nurul Hussain, the then DGP, the then

IGP(Operations), and other officers of Police Department lowest being Ajmal Ali, O.C. Hajo Police station. Mr. Mahanta filed his affidavit in response to the notice but prayed for fractured stay of the proceedings until disposal of a writ petition in the Supreme Court of India praying for CBI inquiry into the alleged secret killings of 365 persons during the period from 1996 to 2001, but the prayer could not be granted partly because the facts could not be verified and partly because granting the prayer would invite similar prayers to others resulting in total stay of the time-bound Commission. Mr. Nurul Hussain, though filing his affidavit, by an application challenged the validity of the very constitution of this Commission on the ground that the preceding Hon'ble Justice S.Haque Commission having been terminated after it almost completed its work, under section 7 of the Act that Commission having ceased to exist, the instant Commission could not be constituted and this Commission had no jurisdiction to proceed with the matter; and that the applicant having already participated in that enquiry, he could not be prosecuted and punished again. He also prayed for calling of the records of that Commission from the Government for his use in cross examination of Shri Ananta Kalita. Both the applications were rejected by reasoned orders. Thereafter the learned counsel for the two noticees proposed to cross examine Shri Ananta Kalita before they themselves were cross examined. This was not allowed making it clear that first they were to respond to the notices under Section 8B by filing affidavit to be treated as examination-in-chief and cross examined thereon, and then if required, cross examine his adversaries. This had to be so in order to avoid dilly-dallying and non filing of affidavit and cross examination thereon. Unfortunately, counsel for the two aforesaid notices took lot of time in reasonless arguments trying to cover up their non-examination despite directions to appear. Shri Prafulla Kumar Mahanta filed his affidavit and examined himself, but Shri Nurul Hussain though filed his affidavit, had neither tendered it nor has examined himself till the last days, when he appeared and was examined and cross examined. At the hearing Mr. S.C.Khound, the learned counsel for Shri Prafulla Kumar Mahanta submitted that there is no corroboration for the journey of Ananta Kalita from the foothill to the road and thence to the AJYCP office at Maligaon; and that he did not narrate the whole story to those who were present there in the office. These submissions are not reasonable inasmuch as it is human nature to exert utmost to save one's own life; and the medical certificates amply corroborate the statement. So far as failure on the part of Ananta to narrate the whole story at the Maligaon office, his injured condition was such that he could even open his mouth, not speak of narrating the whole story.

It was submitted for N.W. 3 that the Hajo P.S. case No. 19/1999 was for possession and recovery of certain arms in connection with the Singimari Multi-purpose Agricultural Farm, and he was in jail for 90 days, had nothing to do with his instant kidnapping case. It is pointed out that in the FIR dated 19.9.99 the details of the his journey from foothill to AJYCP office at Maligaon was not stated in full. This submission is flimsy as the FIR need not be an encyclopaedia of facts of the case. The injuries sustained have also been challenged in contradiction of the medical reports in support of which three doctors were examined in the case. This submission is accordingly rejected.

Shri Nurul Hussain's learned counsel Mr. Z. Camar submits in writing that except in an answer to a question put by the learned Senior Govt. Advocate, Assam, the petitioner nowhere implicated Shri Nurul Hussain, and there were no materials for which the S.8B notice should have been issued to him; and that Shri Nurul Hussain neither had any hand in the incident, nor did he conspire with anyone against Shri Ananta Kalita; and further that it was out of political rivalry that this has led to his implication with a view to malign him in his political career..

The facts of Ananta's kidnapping and attempted killing are reminiscent of Machiavelli's Prince (Chapter 8) and the Nazi's "Gestapo". The former, *inter alia*, discussed how to attain the

position of Prince by “villainy”, that is, by treachery and cruelty, Gestapo, because of lifting the innocent victim from his castle (every man considers his home, however small it may be, to be his castle for protection) with a view to destroy him, trampling over his legal, fundamental; constitutional and human rights. Gestapo (in full-*Geheime Staatspolizei*) was the secret political police of Nazi Germany. It operated without civil restraints, and its actions were not subject to judicial appeal.. The Gestapo was set up by suspending the clauses of the Weimer Constitution guaranteeing civil liberties to the German people “The most casual remark of German citizen might bring him before the Gestapo, where his fate and freedom were decided without recourse to law. It meant that the rule of law were replaced by the tyrannical rule of men, the Gestapo which was the “primary instrumentality of oppression.” Thousands of Jews, leftists, intellectuals, trade unionists and political clergies disappeared in concentration camps after being arrested by the Gestapo. All those who confined Ananta Kalita in the APBN operation centre, all those who took him to the hill crest and facilitated in his being shot were the accomplices, and the man who ordered the firing and who fired the shot were the perpetrators thereof. The officers of the APBN at the relevant time may be identified to have been accomplices. All those who administered the ‘operation centre’ may also be taken to have been accomplices.

The camp narrated by the victim Ananta Kalita in the 4th Assam Police Battalion (Ananta first mentioned 13th APBN which is stated to be at Lilabari and not in Guwahati).with studied details can be described as veritable concentration and extermination camp maintained by the police authorities.in utter violation of the Constitution and the laws. The operation of lifting the victim at night from his house with violence and taking him to the concentration camp by masked police and SULFA men in Police like vehicles constituted a Gestapo action having Gestapo effect. The taking of the victim to the hill crest, shouting “Jatiatabadi Juba Chatra Parishad go to hell”, and firing shots at him on vital part of his body was an act to cause his disappearance. The perpetrators and accomplices thereof, if proved, are, therefore, liable for all these actions under the penal and other laws of the country.

The police version as can be gathered from the case diary is that during investigation on 2.2.2000 the victim Ananta Kalita accompanied the I.O. of Hajo P.S. case No.155/99 along with an Executive Magistrate to various locations and was asked to locate the place where he was kept by the assailants, but he could not identify the place where he was held captive by the assailants Suggestion of police was that it was likely that the assailants might have confined him in some houses in Kahilipara hills and they had deliberately given him the impression of a police camp. to confuse him. During investigation, said police, no involvement of Assam Police in this kidnapping and attempted murder could be found and no involvement of Assam police was found. No place either in 4th APBN or 10th APBN where the victim was kept from 16.9.99 to 18.9.99 could be located even though the I.O took assistance of Ananta Kalita. The police, as implied in their suggestion, said that no trace of the allegation that on the night of 18.9.99 after he was shot and injured and could manage to crawl up the hill and his being taken by a truck could be shown and neither the truck nor the line hotel where Ananta and his rescuing driver took tea could be located. The autorickshaw. which he allegedly hired from Beltola to AJYCP office at Maligaon also could not be located. The exact place where the shooting took place could also not be identified by Ananta. Nevertheless, the police by their statements admitted as fact that Ananta was kidnapped from his house on 16.9.99 midnight and after keeping him confined in some hilly area in and around Guwahati city, they shot him somewhere in Jorabat /Burnihat area and from there he could manage to reach the AJYCP office at Maligaon; and the kidnapping party had one SULFA activist, namely, Ramen Deka who was absconding., but was chargesheeted and the

amalgamated case was still pending. This explanation of police was stated only to be rejected, inasmuch as if the earlier and the later portions of the story are admitted, the middle part alone could not be allowed to be interpreted as having been caused by somebody other than police nor would Ananta's story be consistent to or explainable by the police version.

Dr. Y.K. Phukan the learned senior counsel for the Commission submits on three aspects, namely, the credibility of the story; if believed, the constitutionality of the actions; and the perfunctory nature of the investigation in the case. Mr. P.K. Musahari, the learned Senior Govt. Advocate, Assam also argued on these points. We proceed to deal with these points of argument.

(a) Credibility depends on evidence, persuasion and judgment on basis of the evidence, which may be direct or circumstantial, real or presumptive. Best on "The Principles of The Law of Evidence". Ninth Ed. in its Introduction (pp.4-5) said:

6. "With regard to intensity of persuasion, the faculties of the human mind are comprehended in the genera, knowledge and judgment. .1. By "knowledge" strictly speaking, is meant an actual perception of the agreement or disagreement of any of our ideas; and it is only to such a perception that the term "certainty" is properly applicable. Knowledge is intuitive when this agreement or disagreement is perceived immediately, by comparison of the ideas themselves; demonstrative when it is perceived mediately, i.e, when it is deduced from a comparison each with intervening ideas which has a constant and immutable connection with them, as in the case of mathematical truths of which the mind has taken in the proofs.. and lastly through the agency of our senses, we obtain a perception of the existence of external objects, our knowledge is said to be sensitive. But knowledge and certainty are constantly used in a secondary sense, which it is important not to overlook; viz, as synonymous with settled belief or reasonable conviction; as when we say that such a one received stolen goods knowing them to have been stolen or that we are certain or morally certain, of the existence of such a fact etc."

It is evidence that Ananta's eyes were tied first with his 'ganzi' later with cloth throughout his journey. How, then you expect him to show everything afterwards? Again, for denying that he was shot below his earhole in face of the injuries sustained by him which were corroborated by medical evidence? Nobody from the opponent's counsel cross examined the medical witnesses. Therefore, none could be allowed to contradict the medical evidence. Best also says:

7. 2. "Judgment", "the other faculty of the mind though inferior to knowledge in respect of intensity of persuasion, plays quite as important a part in human speculation and action, and, as connected with jurisprudence, demands our attention even more. It is the faculty by which our minds take ideas to agree or disagree, facts or propositions to be true or false, by the aid of intervening ideas whose connection with them is either not constant and immutable, or is not perceived to be so.. The foundation of this is the probability or likelihood of that agreement or disagreement, of the truth or falsehood, deduced or presumed from its conformity or repugnancy to our knowledge, observation, and experience. Judgement is often based on the testimony vouching their observation or experience but this is clearly a branch of the former, as our belief in such cases rests on a presumption of the accuracy and veracity of the narrators."

We have to bear these basic principles in mind throughout the enquiry. The police version is based on the statement, under signature of Shri H.K. Deka, that was submitted before the Hon'ble Justice S.Haque Commission of Inquiry. The same statement was referred to by the retired D.G.P. Mr. Sumant. The same statement has been annexed to his affidavit by

Mr.G.M.Srivastava, I.G.P.(Operations), later promoted as Addl D.G.P.(Operations), Assam. The said statement questions only the middle part, i.e., the torture and detention in the APBN, suggesting that it could have been somewhere else and only to mislead Ananta that impression might have been given. Ingenuous though it was, it cannot be accepted because of the vivid details of the centre given by Ananta, such as, police uniforms seen, the series of beds seen, the row of latrines seen, the people met therein like one "Phida Gogoi", that of Viswakarma Prasad etc. When a statement is studded with vivid details, it is likely to be true, and may be accepted in evidence. Again if this is believed, where is the defence of the department? The entire story remains intact. If such a thing actually took place it should be treated according to law, so as not to allow its recurrence.

Considered the affidavit filed by Shri Prafulla Kumar Mahanta, At the hearing Mr. S.C.Khound, the learned counsel for Shri Prafulla Kumar Mahanta submitted that there is no corroboration for the journey of Ananta Kalita from the foothill to the road and thence to the AJYCP office at Maligaon; and that he did not narrate the whole story to those who were present there in the office. These submissions are not reasonable inasmuch as it is human nature to exert utmost to save one's own life; and that medical certificates amply corroborate the statement. So far as failure on the part of Ananta to narrate the whole story at the Maligaon office, his injured condition was such that he could not even open his mouth, not to speak of narrating the whole story, Medical evidence is enough to answer this submission..

It was submitted for N.W. 3 that the Hajo P.S. case No. 19/1999 was for possession and recovery of certain arms in connection with the Singimari Multi-purpose Agricultural Farm, and he was in jail for 90 days, had nothing to do with his instant kidnapping case. It is pointed out that in the FIR dated 19.9.99 the details of the his journey from foothill to AJYCP office at Maligaon was not stated in full. This submission is flimsy case. The Supreme Court has repeatedly emphasized on this point saying that at that time all the details may not be known, and the mental strain may also there, The injuries sustained have also been challenged in contradiction of the medical reports in support of which three doctors were examined in the case. Supreme Court has held that the FIR need not have minute details; and that absence of details in a first information report (FIR) cannot make the prosecution case doubtful.. A Bench headed by Hon'ble Justice Arijit Pasayat said that an FIR was not an encyclopaedia of the facts concerning a crime and a prosecution case could not be doubted merely because the FIR did not contain minute details; and further that there was nothing wrong in an FIR which presented a broad picture, the court said, adding that there was an element of stress at the time of lodging an FIR in a criminal case."it is not necessary that minutest details should be stated in the FIR., the Court said in upholding the conviction of four accused in an Andhra Pradesh murder case. The Supreme Court also observed that relationship could not be a cause of doubting a witness. "It is more often than not that a man would not conceal the actual culprit and make allegation against an innocent person" It cautioned that each case should be judged on its own facts. The injuries sustained by Aananta have also been challenged at the hearing forgetting the position that the opponents never challenged the injuries in evidence.. How can they now challenge the injuries in contradiction of the medical reports in support of which three doctors were examined in the case. This submission is accordingly rejected. Shri Nurul Hussain's learned counsel Mr. Z Camar submits in writing that except in an answer to a question put by the learned Senior Govt. Advocate, Assam, the petitioner nowhere implicated Shri Nurul Hussain, and there were no materials for which the S.8B notice should have been issued to him; and that Shri Narul Hussain neither had any hand in the incident, nor did he conspire with anyone against Shri Ananta Kalita; and further that it was out of politi rivalry that has led to his implication with a view to malign him in his political career...

By notification the identity of the kidnappers and murder attempters are yet to be identified.. We discussed the meaning of "secret". Identification of the killers has to proceed on the basis of investigation and evidence. It appears from records that routine investigation proceeded on usual lines/

Questioned on the two cases, namely, that of killing of Dimba Rajkonwar and that of Dr. Dharanidhar Das and family, Shri G.M. Srovastava said

(A., 88) Normally police compares the cases on the basis of *modus operandii* and circumstances. In this case I have not seen the case diary nor I have seen the statements. But the reason and motive behind the killings may come out only after thorough investigation of the situation and examining in tail every aspect and possibilities by investigation officers and the officers supervisory level. Shri Prafulla Kumar Mahanta, the then Chief and Home Minister made some reference to Ananta Kalita's case(reported in Official Reports of Assam Legislative Assembly Debates, October-November Session, No. 3, pp. 78-79) (Translated from Assamese)

"One Hon'ble member has raised the matter relating to Ananta Kalita. In that connection I would clearly say that the Police Department is continuing investigation. What have been told on the Police Department are not true. The Police force cannot do such things. Not possible. The entire incident, one man being shot at one place and falling upside down at another place is not possible. We are awaiting the investigation report. The Hon'ble member is also requested to wait for the investigation report." In course of his cross examination Shri Prafulla Kumar Mahanta was asked by the Commission:

Q When you made a statement in the floor of the Assam Legislative Assembly on 2.11.99 to the effect that it was not possible for a man being shot at one place and fall flat at another place and that whatever as alleged against the police was not correct, did you go through the medical report of the injuries sustained by Ananta Kalita as a result of he being shot at and falling and rolling downhill, and the statement of Ananta Kalita made u/s. 164 of the Cr.P.C. before a Magistrate ?

Ans. "My statement in the floor of the Assam Legislative Assembly was made on the basis of what was prepared by the concerned department which was expected to have considered the relevant materials. I myself did not go through the medical report as well as the statement u/s. 164 given by Shri Ananta Kalita." The police version, considered in light of these principles, has obvious lacunae. As has been submitted by Dr Y.K. Phukan the learned senior counsel for the Commission and Shri P.K. Musahari the learned senior Govt. Advocate, Assam, the first part of the kidnapping from Ananta Kalita's house to the 4th/10th APBN, Kahiliparam has not been denied by the police. Their version is that Ananta might have been held or kept in some place or house other than that of any APBN and only to mislead Ananta the kidnappers mentioned 13th APBN. Evidence shows that those were the people of 10th APBN who misled by telling Ananta that it was the 10th and 13th APBN and it was the "operation centre" thereof. In fact the two, were the 4th and 10th APBN that had been side by side. The police version that Ananta's falling and rolling downhill after being shot at, and regarding consciousness and climbing upwards and managing to reach AJYCP office has not been challenged in the police version. This part could not be belied merely by his failure to find the truck, the autorickshaw and the line hotel, because all those were mobile and changeable things, not expected to remain static and the same.. The time factor was to be considered as also the injuries caused by the shot and when rolling downhill, The stream wherefrom Ananta sipped water in the injured state was static, but that was not searched for proof.. Ananta's vivid description of what has been called by them to be its "operation centre, has to be believed because of Ananta's description of the centre is studded with vivid details and in face of the vivid description of police personnel, police uniforms and police guards on duty, besides the rows of 30 to 40 beds and the line of 4 latrines. The

conversations going on in that house and the statement that it was the "operation centre" of the APBN show the police suggestion to be incredible. The performance of Viswakarma puja and per-taking of the Prasad thereof proves the existence of the temple thereof. The third part of the story, namely, taking Ananta to the hill crest, presence of the police personnel called the Commander, the Major, and the triggerman appear so natural that it could not be disbelieved, Ananta's inability to locate that spot lends more credibility than if he succeeded. His eyes were tightly tied. His hands were also securely tied. It was at dead of night. It is, therefore more likely for Ananta to have failed than to have succeeded in locating the hill top. It is not the police version that there were no hill tops in the Jorabat- Burnihat area. Sufficient description of the nearby stream was also there.. Then again, the time and injuries sustained as proved by medical certificates from the GMCH, GNRC and Down Town hospitals were undeniable testimony. In fact all the three doctors, namely Dr. Hem Nath, Dr. Ajit Thakur and Dr. and Dr. Bijan were examined as witnesses.. No police witness cross-examined Ananta on his statement made before the Commission. It is relevant to mention that the then Chief Minister Shri Prafulla Kumar Mahanta made a statement in the floor of Assam Assembly on saying that the fact of a person being shot at one place and falling flat at another place was impossible. The Chief Minister was asked at the cross examination as to whether he had occasion to peruse Ananta Kalita's injury report and the statement he made before the Magistrate, and his replied that he did not peruse those personally and he made the statement as prepared by the department which was expected to go through them while preparing the report. In face of the contents of these materials it is clear that the department did not peruse them. It is also an accepted principle of evidence that when a statement is studded with vivid details, it is more likely to be true and acceptable. The version of the victim is therefore found more acceptable than that of the Police. Department The injuries sustained have also been challenged in contradiction of the medical reports in support of which three doctors were examined in the case. This submission is accordingly rejected.

Shri Gupteswar Sing, retired Assistant Commandant, 4th Assam Police Battalion, Kahilipara, since retired, in response to our notice No. JSCI/KK/2005/454 dated 18.7.2006 u/s. 8B of the Act, in his letter dated 20th August 2006 stated that that "there is no any rank of Major in Police or in Battalion. There are the post of Subedar Major, BN Hav.. Major, Coy Hav Major only and Subedar Major is known by SM or Subedar Major Saheb by all. SM is never called by Major. Besides, I am not in sure that whether Shri Ananta Kalita was kept in 4th A.P. Bn or in other unit. In case he was kept in 4th A.P. BN I am quite ignorant about this matter as no anybody has reported me." He prayed for time to appear, but no time was left.

Shri Nurul Hussain's learned counsel Mr. Z. Camar submits in writing that except in an answer to a question put by the learned Senior Govt. Advocate, Assam, the petitioner nowhere implicated Shri Nurul Hussain, and there were no materials for which the S.8B notice should have been issued to him; and that Shri Narul Hussain neither had any hand in the incident, nor did he conspire with anyone against Shri Ananta Kalita; and further that it was out of political rivalry thii has led to his implication with a view to malign him in his political career. The section 8B notice has been issued in compliance with the princiole of natural justice. The learned counsel had earlier raised the question of jurisdiction which was disposed of. The S, 8B notice is issued for what it says and also for what it implies. There are allegations of Ananta Kalita having been pressurised to change his political line and accept the line of Yuba Parishad which is said to have been the youth wing of the A.G.P.. Then there is the allegation of Ananta Kalita heving been confined and tortured in what ha been called the operation centre of an APBN and finally shooting at him to kill, trampling over his fundamental, legal and human rights. As a Minister of the relevant period,. these actions may need an analysis of the collective responsibility of the Ministry of those days.. Should the respectable witness considers that there was nothing said and unsaid about him, the notice could be assessed accordingly. The Commission is glad that Mr. Hussain, a senior Minister of those days has, at last, been pleased come and examine himself before the Commission..

The Commission is of the view that the unconstitutionality of the kidnapping and attempting to murder is patent. The criminal law of the country making interference with many rights of a fellow

citizen a criminal offence. The Constitution of India guaranteed the rights to life and liberty as fundamental rights. It also guarantees other fundamental rights like the freedom of movement, of thoughts, and of association without arms. Nobody's life can be destroyed without the authority of law. Criminal law of the country provides for appeals to the Sessions Court, the High Court and the Supreme Court against violation of right to life and liberty of a citizen. Over and above that when others fail, there is provision for clemency petition to the Governor and above that to the President of India. As against that in this case, Shri Ananta Kalita was forcibly lifted from his house and dragged into the Tata Sumo by armed masked men, out of whom he recognized only Ramen Kalita@ Deka in the Sumo. There is evidence to show that for three days he was confined, with tied up hands and eyes, in what was called APBN's "operation centre" on bare food and drink; and was slapped on face and kicked cruelly by the men there. On 18th he was, in that condition, taken to Jorabat and thence to a hill crest where his hands and eyes were more securely tied, made him stand on the crest and was shot on his head to kill, but by grace of God he did not die but survived to tell his story to the society. The learned counsel for the Commission and the learned Senior Govt. Advocate also point out that no police officer cross-examined Ananta Kalita on his statement.

(C) To find out whether there was any conspiracy in targeting the victim and the motive behind such kidnapping and attempting murder.

This term is replied in two parts, namely, conspiracy in targeting, and motive for killing.

I. Conspiracy in targeting the victim. Conspiracy, in the context of the instant inquiry, will mean criminal conspiracy as defined in Section 126A of IPC as follows:

"when two or more persons agree to do or cause to be done .-

'(1) An illegal Act, or

(2) An act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.- It is immaterial whether the material Act is the ultimate object of such agreement or is merely incidental to that object..

Abetment of a thing. As defined in Section 107 of the Indian Penal Code (IPC)

"A person abets the doing of a thing, who-

First- instigates any person to do that thing; or

Secondly- engages with one or more other person or person or persons in any conspiracy for the doing of that thing. if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly, institutionally aids, by any act or illegal omission, the doing of that thing.

Explanation -1. A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.; or (Illustration omitted).....

Explanation -2 Whoever either prior to or at the the time of commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act"

The law and jurisprudence of conspiracy has been discussed in para 10 of the Introductory part of this report; the same is referred to. The question whether there was any conspiracy or not in the kidnapping and attempting murder of Ananta Kalita has to be decided on the basis of the

law, and facts in evidence on record, In case the answer is in the affirmative, then also the question will be as to who were the conspirators ?. It is in evidence that Ananta Kalita was arrested and detained in Hajo Police station several times suspecting him to be ULFA and he was persuaded by Hajo police to join the "Yuba Parishad" the youth wing of the A.G.P., but he refused to do so. That may have antagonized the authorities who did not like him to continue to be an ULFA as against the SULFA.. That may have been the ultimate motive . This was proved when before shooting him at the hill top some shouted "Yuba Chatra Parishad go to hell" This was a part of the general 'Ulfocide' plan of those who liked expansion and popularity of the then A.G.P. and decline of ULFA and AJYCP. which was to their political advantage. The fact that a SULFA activist was in the team of kidnappers, and was recognized by Ananta Kalita while in the Tata Sumo taking him away from his house at dead of night and his presence on the hill crest at the time of Ananta being shot, and the fact that when O.C. Hajo P.S. was informed on 19 that Ananta Kalita had been found he shouted "how can that be", lend credence to the 'Ulfocide' plan of the conspirators. The fact that 12/13 persons participated in the act of kidnapping Ananta Kalita on the fateful night of 16.9.99 and taking him to and confining and torturing at the 4th APBN torture camp and so many persons including the "Major" and the shooter, along with many others confirm the Ulfocide plan.; there can be no other answer than that there was criminal conspiracy in the kidnapping and in attempting his killing..

II. Motive. behind the kidnapping and attempting to kill may be analysed as direct or immediate, and the ultimate. Any judicious finding as to the motive of kidnapping and attempting murder of Shri Ananta Kalita has to be based on an analysis of the events in his lifetime vis-à-vis the AGP, wherefor all his miseries were planned by different agencies of the power that was all other hypotheses of his (Ananta's) having enemies, and of his any antagonizing activities having been rejected in course of investigation of the case. Some of such events that happened prior to the incident have also to be analysed. The instances of Ananta Kalita being requested by various Govt. and private agencies to try to persuade Ananta to give up Jatiatabadi Yuba Chatra Parishad and. perhaps, ULFA. .

The immediate motive of the kidnappers and attempters could be any reward or satisfaction emanating from those who harboured the ultimate motive and engaged them. The desire of a consequence is the motive for an action, Intention and motive are often used synonymously. In criminal law the question of motive is not material where there is direct evidence of the acts of the accused and the acts themselves are sufficient to disclose the intention of the actor. In such cases while. motive is immaterial, intention is material.. In the Explanation to section 161 IPC "a motive or reward for doing is illustrated as - a person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done. In this sense, motive of the kidnapping and attempting to murder is to reduce strength of the ULFA and the Jatiatabadi Yuba Chatra Parishad and to help the AGP. annihilate its opponents and perpetuate its governance, for which the kidnappers and attempters have committed the crimes, and without which they would not have committed those crimes..

The ultimate motive could have been the perpetuation of the rule of those who were in power at the relevant time. This was likely because there were a series of Govt. actions in a row, The press appeal through different organizations to persuade members to give up path of violence and come to peace talks. Then the caution that failure to do so would not be good for the family. Then came the arrest and detention under TADA, and latly forthe attempted killing... All were at the control of the Government. And the last one formed part of the series of action. Therefore the conclusion that there was conspiracy, beyond reasonable doubt..

(D) Pinpointing responsibility on persons involved directly or indirectly in commission kidnapping and attempting murder.

This is the most difficult task of the Commission. In the absence of effective direct evidence, we have to depend on relevant circumstantial evidence. That too is not forthcoming in such measures as could help us in pinpointing responsibility on the persons involved. Fortunately the term of reference mentions "involved directly or indirectly in commission of killing" This enables us to act on basis of integrated evidence rather than on isolated ones. We have therefore to integrate such parts of evidence as will lead to a conclusion beyond reasonable doubt, for pinpointing responsibility. Besides what are found in relevant pieces of evidence, the common characteristics found in each individual case also throw some light.

While answering its terms of reference the following common characteristics of the first group of seven cases are found in this case, so as to justify a finding of a general plan of "Ulfoside" i.e., deliberate killing of ULFAs and their families and relatives on that basis, namely:

1. That this kidnapping and attempted murder involved a suspected ULFA Shri Ananta Kalita and its investigation is kept pending, a charge sheeted absconder has not been found and arrested..
2. As in other cases, this kidnapping and attempted murder of Ananta Kalita were committed in midnight, to allow the assailants to escape under darkness.
3. The assailants covered the eyes of the victim with wrappers to avoid the assailants being identified.
4. The weapon used in attempt to murder was a firearm. Perhaps, of prohibited bore generally found in police-military situations. From the 'operation centre, he was transported on a Police vehicle to hill top for shooting him dead.
5. The firearm being not found, forensic examination thereof is out of question, and the investigation has fizzled out. In fact in the Hajo case Final report was submitted, but the case has been reopened.
6. The vehicle used for kidnapping was a Tata Sumo, and for taking to the hill crest was a police vehicle, neither has been detected. The State machinery itself being involved investigation is a mere eyewash.
7. There were police patrolling in the Hajo Kahilipara road, but the whole action being State engineered one, no question of detection arose during or posterior to, the kidnapping and attempted murder.
8. That there was lurking evidence of unholy police-SULFA nexus, the latter being constituted into an extra-constitutional authority and used as the executioners.
9. There was general resentment and decry against the Chief Minister/ Home Minister.
10. There was connivance of SULFA; and omission to make any SULFA an accused despite clues..
11. The investigation did not commensurate with the seriousness of the crime perpetrated..
12. That modern scientific methods of investigation were never used.
13. No consolation was sent from the Govt. of Assam to the victim.
14. No ex-gratia/compensatory payment was made or offered by the Govt. of Assam in this case.
- 15 In this case death penalty had been imposed for "status offences," on Ananta Kalita being suspected as ULFA and for being of the Yuba Chatra Parishad.

16. From this case "remote orchestration" principle is deducible.

This conclusion is based on the similarities of the seven cases in all respects, which could not be so, unless there was remote orchestration from higher authorities. The remote was supposed to have been at Home. The "kill and get killed" applied to a SULFA leader

The facts of Ananta's kidnapping and attempted killing are reminiscent of Machiavelli's Prince (Chapter 8) and the Nazi's "Gestapo". The former, *inter alia*, discusses how to attain the position of Prince by "villainy", that is, by treachery and cruelty. Gestapo, because of lifting the innocent victim from his castle (every man considers his home, however small it may be, to be his castle for protection) with a view to destroy him, trampling over his legal, fundamental; constitutional and human rights. Gestapo (in full-*Geheime Staatspolizei*) was the secret political police of Nazi Germany. It operated without civil restraints, and its actions were not subject to judicial appeal. The Gestapo was set up by suspending the clauses of the Weimer Constitution guaranting civil liberties to the German people "The most casual remark of German citizen might bring him before the Gestapo, where his fate and freedom were decided without recourse to law. It meant that the rule of law were replaced by the tyrannical rule of men, the Gestapo which was the "primary instrumentality of oppression." Thousands of jews, leftists, intellectuals, trade unionists and political clergies disappeared in concentration camps after being arrested by the Gestapo.

(E) Recommendations to prevent recurrence of such killings.

With its limited knowledge, experience and wisdom, to prevent recurrence of such attempted killings, the Commission would like to make twofold recommendations, namely, (1) the immediate, and (2) the long term.

(1) The immediate measure is, first to try to keep in abeyance, and then gradually dismantle the existing Unified Command structure. which is created by an Order of His Excellency the Governor of Assam and is neither a statute nor a statutory order, but an arrangement agreed to by the Centre and the State Govt. regarding deployment and operation of the armed forces and other forces of the Union deployed by the Central Govt, "in aid of civil power" of the State of Assam, on request/ requisition by the State Govt. The Structure itself envisages its review after every three months; and there is no limit to the review and may even envisage its dismantling. The parties concerned may agree to dismantle it in the same way they agreed to create it. The constitutional position as to deployment of the armed forces and other forces of the Union in a State has already been discussed in paras 14 & 15 of "Part I. INTRODUCTORY." of this report and is referred to in this context. The deployment of the armed forces and other forces of the Union in the State of Assam has been "in aid of the civil power of the State." In case of the civil power of the State being sufficient enough to cope with its civil problems, *ex hypothesi*, there is no need of armed forces or other forces of the Union for the State. The armed forces and other forces of the Union were deployed to cope with the internal disturbance thought to have been caused by the activities of the banned outfits disturbing the area leading to its declaration as a disturbed area under the Disturbed Areas Act./ Armed Forces (Assam & Manipur) Special Powers Act, 1958, as amended in 1972. However, the disturbance has to a great extent been under control. The life in the State has become normal. The last Assembly election could be held without any disturbance, thanks to the co-operation of the local banned outfits. This may be an appropriate time for effective talks with the local outfits to observe cease fire. first for a short period, say six months, and for gradually longer and longer periods, and for restoration of normalcy and confinement of the armed forces and other forces of the Union to the barracks, and on continuation and assurance of normalcy, ultimately withdraw, on an assurance of peace on the part of the banned outfits and ultimately lifting of their bans themselves. To achieve this, strenuous, but cordial, talks

between the outfits, the State Government and the Central Govt would be necessary; and there is no reason why such talks should not succeed. Restoration of normalcy. Disturbance and insurgent activities invited the Unified Command Structure. It is in the hands of the people to assure that peace will be maintained and insurgent activities will be curbed and normalcy will be restored. If the public are serious in this restoration of normalcy, there can be no earthly reason why such a situation cannot be brought about by mutual co-operation of the State and its people. Modalities may be worked out in consultation and cooperation among the Government, the political parties, student organizations, the outfits and the general public. Restoration of normalcy will also effect economy..Meanwhile, in the interest of peace and tranquility, there should be no witch hunting. Constitutionally speaking, restoration of normalcy is the terminus of internal disturbances and army deployment in the State.

(2) The long term measures are meticulous observation of the provisions of the Constitution and the laws in carrying out each and every function of the government. All the departments of the Government must function faithfully in accordance with the mandatory provisions of the Constitution of India. In other words, the **long term measures** may include, in the long run, the faithful obedience to, and implementation of, the Constitution and the laws of the country, The Centre-State relationship must also be in accordance with the mandates of the Constitution. Guidance of the famous Sarkaria Commission's report will be helpful in this regard. Manusmriti said (Buller) VIII, 351. "By killing an assassin the slayer incurs no guilt, (whether) he does it in public or secretly; in that case, fury recoils upon fury." 386."That king in whose town lives no thief, no adulterer no defamer, no man guilty of violence and no committer of assaults attains the world of Sakra (Indra)";420. "A king who thus brings to a conclusion all the legal business enumerated above, and removes all sin, reaches the highest state (of bliss)" **Sukracharya's Dandaniti is based on danda**, meaning, punishment. Ancient sages said that without *danda matsyanyaya will prevail and* the strong will devour the weak, even the sacred *prasada* of the *yajna* will be swooped at by crows. *Danda* keeps awake when the country is asleep. All people have innate goodness in them, but some do not. In the absence of punishment those will demoralize others in the society. The norms and laws of today are not materially different. Secret killing amounts to denial of all the constitutional, legal and human rights to the killed, and violation of all these rights by the killer. If killing is by public authorities, it also means trampling over the oaths taken by them on assumption of public offices. The society need be protected from the people with such dangerous propensities. It is trite learning that every action has a reaction, fury generates fury and that brutalities generate more brutalities. Continuous disturbance of the even keel of the society and some excesses committed by some elements had to be checked by equally harsh measures, but that would not justify the lawfully established Government in abdicating its powers, duties and responsibilities to extra-Constitutional organs jeopardizing the legal, fundamental and human rights of the citizens of sovereign, socialist and democratic Republic of India.. Those who are entrusted by the people to govern them, ought to be well versed with the provisions of the Constitution of India and the relevant laws, rules, and administrative instructions, and orders framed thereunder. They should be aware of the constitutional limitations as also the rights of the citizens of the State against their State itself. Fundamental rights of citizens, including rights to life, liberty, freedoms, non-discrimination etc. must not be violated. They must never have propensity to kill the citizens they govern, secretly or openly. They must not harbour any kind of hatred or dislike on numerical, religious, communal, racial, ethnic, social, historical, or of any sort whatever. At the minimum they should be true to their oaths and be absolutely free from corruption in any form and manner..While no training course will be appropriate, considering their exalted position and prestige, periodical seminars and discussions at government levels may refresh their knowledge and experience.

Regarding the SULFAs suspected, it may be appropriate to observe that because of the position in which the SULFAs found themselves, between the devil and the deep sea.. their erstwhile colleagues having been antagonised by their act of surrender, they deserved adequate protection, But using their services as "guides, "spotters". Trouble-shooters and cllaborators in police functions could never be viewed as proper treatment meted out to the SULFAs, far less their being used as the striking arm or the men in charge of the trigger. Let them now be bereft of the hallowed positions, and give them fair field and no favour, at least following the insolvency principle of allowing the declared insolvent to have a fresh start in life. How the erstwhile affected people will adore or avoid them will be a different matter altogether..

So far as the Government wings, agencies, and authorities, both official and political, the principle of "resposndent superior" will surely apply; and for all the lapses and misdeeds at the lower levels, higher levels authorities shall be held liable and be subjected to proper punishments. So far as political and Minister level authorities are concerned, the principle of collective respsnibility wilt apply to all those who were forming Govtrnment in the State at the relevant period. This principle of collective responsibility will apply wherever they happen to be, during the period following the violation of Constitutional and legal rights of the affected citizens whose fundamental and other legal and human rights were violated during their governance. But even here the insolvency principle should be followed and the political personalities also, in the inerest of peace and tranquility in the State be given fair field and no favoue in the ensuing political process of the State. Let there be no withch hunting of any sort. How the same affected people will accept or reject them will, of course, be an entirely different matter..

The Police department is the first resort of the people for protection of their life, liberty, property etc. Spreading disaffection towards police is an offence. Everyone has the duty to help police in restoring law and order in society, if one is justly called and he is reasonably capable of doing so.. There is no doubt that our Police force is one of the best in the country. To make our police still more and more efficient and instructed, some officers, by turn, may be sent for advanced training in detection and decision in modern crimes and criminal practices. Such trained police personnel may be put in the police training College. They should undergo a training course in human right and cyber and other present day crimes and crime prevention.

(F) Any other matter related or relevant to the inquiry

Under this term of reference the Commission has decided to discuss the "related or relevant" matter of adequate ex-gratia or compensatory payment to the victim Shri Ananta Kalita .commensurate with the loss and deprivation suffered and obstacles encountered by him in his development in the line. and to the extent, hitherto planned by him.. We are all proud of our welfare State. In case of any mishap or calamity befalling any one or more of our citizens or families, the welfare State considers it to be its duty to render rescue and relief to the affected persons, more so. when the sufferers have reasons to feel that the State itself was the immediate, or even remote, cause of the misery. The rendering of rescue, relief and recompense is irrespective of any fault on the part of the State.. It is really praiseworthy of the Chief Ministers of the States in India to have instantly announced such reliefs and rehabilitation package, and offer in appropriate cases employments to the surviving eligible members,. inasmuch as sometimes the very bread earning capacity is lost to them. Even the Legislature has now provided for payment of suitable "no-fault liability" compensation irrespective of the claim for fault liability. In the instant case the bread- earning person has been shot at and badly injured under the circumstances discussed in the case. The public

prosecution may result in punishment of the culprits, but that itself will bring no financial and livelihood replenishment of the loss suffered by him. The Commission, as submitted by the learned senior counsel for the Commission and the learned Senior Government Advocate, and for the ends of distributive justice, doth hereby direct the State Government of Assam to pay to Shri Ananta Kalita a sum of Rs 5,00,000 (Rupees five lakhs only). forthwith. More than six years have already elapsed, and it brooks no farther delay. Directed accordingly.

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RAJESH MISHRA & RAJIB KOCH KIDNAPPING/ KILLING CASE

(Tezpur P.S. Case No..541/1999)

(A)The circumstances of kidnapping and disappearance of Rajesh Mishra and Rajib Koch Rajesh Misra and Rajib Koch were friends and co-workers in the former's electrical goods shop Yotisman Commercial. Rajib's elder sister-in-law, admitted into local Sukhada Nursung home on 28.9.99. having been advised to be immediately taken to Guwahati for better treatment, both of them, at about 11.45 P.M, on Rajesh's scooter. reached Madhab Dham for hiring an ambulance. As they were negotiating with its chowkidar Jiban Barua in front of Madhab Dham, about five/six persons, some in police uniform, each with deadly rifle or pistols in hand, arrived there in two white Maruti Zypsies, from two directions, and, without uttering a word, forcibly dragged Rajesh and Rajib into the Zypsies and took them away in the same direction. From the moving Zypsy Rajesh requested Jiban Barua to take care of the Scooter left there in his zimma, .

At Sukhada nursing home finding neither the two boys back, nor any ambulance, a Maruti van was hired and the patient taken to Guwahati, after midnight, Early next morning, not finding Rajib back home, his father Bhola Koch came to the house of Rajesh hoping to find both the boys sleeping there, but was surprised at being told that neither they nor the scooter were there. Rajib's father with Rajesh's mother Mrs Sachi Prava Devi then anxiously reached Madhab Dham at about nine a.m. and saw a gathering already discussing the last night's kidnapping of the two boys. Some of them told that familiar secret killers prowling about in the Town did it. On being asked, Jiban Barua specifically named Krishna Hazarika and Bibek Nath, both known SULFAs, as the kidnappers along with Ochintya Das & others. Bhola Koch deposed that the moment he heard the names of Krishna Hazarika and Bibek Nath, he was crest fallen.

An ejahar was lodged by Bhola Koch, father of Rajib Koch, at the Kachari Hat out post of Tezpur Sadar P.S. which was rather reluctantly received by its In-Charge. The informant deposed that he was not aware of any action taken by the outpost on it. Another ejahar was lodged by Shri Bhola Koch, s/o. Late Bari Koch then at the Mahabhoirab out post of the Tezpur P.S., P.O. Madhab Dham, at 2 P.M. on 29.9.99 to S.I. Mahesh Ch Bora, In-Charge, mentioning the subject as "disappearance of two ambulance searching boys." The gist of the aforesaid events was mentioned therein. Particulars of the boys were given as 1. Rajib Koch height 5 feet. wheatish, round faced, wearing shirt and long pant, aged 25 years. 2. Rajesh Mishra- height about 6 feet, dark, wearing long pant and shirt, stout, aged 27 years. It

Mishra- height about 6 feet, dark, wearing long pant and shirt, stout, aged 27 years. It transpires that pursuant to this FIR, the Tezpur P.S. case No. 541/1999 U/S.365 IPC was registered on 29.9.99, on the basis of the FIR and was so investigated.

The record of Tezpur G.R. case No. 1189/99 shows that one Shri Putul Bora of Nikamul Satra, a relative of Bibek Nath, was suspected of using Bibek Nath and Krishna Hazarika, in getting possession of a plot of land at Nikamul area. Rajesh Misra and Rajib Koch were said to have been opposing Putul Bora in getting the land which was already purchased by J.P.Jadav. This created discord between the would be kidnapped and the would be kidnappers. This was supposed, by some, to have led to the incident of kidnapping. In this, there was an instance of the SULFAs asserting their economic tentacles at Tezpur, as was later complained of by the Tezpur Nagarik Mancha in their Memorandum submitted to the then Prime Minister & others in Delhi.

It appears that the kidnapping case of Rajesh Misra and Rajib Koch, Tezpur P.S. case from Madhan Dham in one of the two Maruti Zyps, coming from different directions, but went in the same direction. Shri Putul Bora, Shri Krishna Hazarika and Shri Bibek Nath were made accused in the case (541/99) and its investigation was to be in that line. One Achintya Das was also mentioned by some in connection with the kidnapping, alleged to have driven one of the vehicles, but he was not made an accused there, and so the Commission also did not call him. The report of Investigation dated 17.4.2002 by the S.P., Sonitpur, Tezpur shows that Krishna Hazarika did confess to his crime of kidnapping the two boys when interrogated, but declined to make his confessional statement before the authorized Magistrate u/s 164 Cr.p.c. The admitted fact that the two accused were arrested, but they escaped on way to thana, was indicative of utter police negligence or complicity. Shri Bibek Nath in his deposition denied that there was any land dispute, but said that he was arrested because he earlier escaped.

The first question to be decided, therefore, is whether this case is to be categorized as a land dispute case, or as a Rajesh Mishra and Rajib Koch kidnapping and disappearance case.. While throughout the instant proceedings it has been treated as a kidnapping and disappearance case, the police version is that it is a land dispute case, but the kidnapping and disappearance could not be explained without the SULFA characteristics, The zypsy vehicles, armed and masked persons and lifting of the two boys at gun point and that too at dead of night, could not be explained without SULFA complicity. Therefore, we proceed on the basis of its being a kidnapping and disappearance case, and so was it included in the list of cases to be inquired into by this Commission..

The next question was whether it was or was not an ULFA related case. Though Shri Bhola Koch said that his eldest son Munindra Koch died in a motor accident in 1994; and that he even did not file a motor accident case, P.W.10 Shri Swapan Koch said that Munindra Koch was an ULFA and was detained by Tezpur Sadar Police several times and that he died in a No.541/99, was investigated. Its G.R.case No.1189/99 was called a land dispute case. The investigation of the Tezpur P.S. case No. 541/99 seems to have been somewhat waylaid by the so called land dispute to which neither the kidnappers nor the kidnapped boys, nor their families were parties claiming any right thereto. Of the two SULFA boys, Krishna Hazarika is recorded to have denied his involvement therein. Shri Bibek Nath also, in his deposition before this Commission denied any connection with the so called land dispute. This was supposed to have been the reason for the kidnapping. However, the case had assumed its true colour when the two kidnappers, both said to be dreaded SULFAs, kidnapped the two boys police encounter in 1994. This was corroborated by independent evidence..

N.W. 8 Shri Abhijit Bora Addl. S.P, said that he ordered the case to be registered on basis of the FIR and he arrested Shri Krishna Hazarik from Jamugurihat on 3.10.99, after both he and Bibek Nath escaped from police custody earlier. 'In the Official Report of the Assam Legislative Asembly debates, October-November session No. 3. page 73. Shri.R.M Singh has been referred to as a man-eating tiger, and it was also mentioned that Rajib Koch and Munindra Koch were arrested and brought. This may be indicative of the family having something to do with ULFA. This case has, accordingly, been treated as an ULFA related case, along with the other notified cases.

(B) The identity of the killers and their accomplices, if any.

The kidnapping and disappearance case of Rajesh Mishra and Rajib Koch was secret as to identity of the kidnappers and of those who caused their disappearance. It is a developed principle of law that accomplices are the parties to the crime. On the basis of degrees of complicity to the crime, accomplices are divided into perpetrators and accessories. An accessory is one who excites or helps the commission of a crime by the perpetrator. Perpetrator is exclusively the person who in law performs the crime. More precisely, the perpetrator is the person who, being directly struck at by the criminal prohibition, offends against it with the necessary *mens rea or negligence*. Identity of the killers and their accomplices has to be determined on the basis of investigation and its findings..S.I. Shri Mahesh Ch. Bora, I/C, being entrusted, started investigation and proceeded to Madhab Dham where he examined Shri Jiban Barua s/o Shri Pradip Barua of Chapai Gadhiapara P.S. Mangaldoi, 2. Shri Keshob Upadhyay s/o.Bhabani Upadhyay of Nepali pati P.S. Tezpur 3. Shri Sankar Das s/u. Late Lankeswar Das P.S. Hajo (Kamrup). On inspection of the place of occurrence and examination of the witnesses he learnt that on 28.9.99 at about 11.45 P.M. the two boys Rajib Koch and Rajesh Mishra arrived at Madhab Dham near Mahabhairab Temple and enquired for hiring an ambulance when two Maruti zypsies arrived from opposite sides, stopped near them and some unknown armed persons made the two board one of the zypsies and both sped away towards Temple side. From the Zypsy Rajes requested Shri Jeeban Barua of Madhab Dham to take care of his left-behind scooter.

The I/O on 29.9.99 itself visited Bamun Chuburi village of the two boys and examined Rajib Koch's father Shri Bhola Koch, Shri Rajesh Misra's mother Smti Sashsi Prabha Devi. Both narrated the same story, but I/O found no clue about the boys. I/O examined Shri Jiban Barua, who stated that he was the Office-in-Charge of Madhab Dham of Civil Hospital Road, Tezpur. He said that Madhab Dham was a trust owned by the Rastriya Sevak Sangh, and that he was working there for three years. He said that on 28.9.99 at about 11.40 P.M someone pressed the calling bell and being awakened, he came out and saw two boys who came by a scooter and they said that one serious patient in Sukhada nursing home was advised to be taken to Guwahati for better treatment and for that they wanted an ambulance at economic rate..We used to let out ambulances at economic rates. He told that their scooter was already booked for next day from morning and there would be no scooter. No sooner these words were spoken, two Maruti zypsies arrived there and some armed persons bade them to board one of the Zypsy's and both zypsies sped away towards the temple, and Rajesh Misra asked him to take care of his left- behind scooter. According to him there were 4/5 armed persons in each zypsy. At first he did not think that the two boys were kidnapped, but later he knew that they were kidnapped to unknown destination. Both the zypsies were white coloured; one had no number plate and the other's number plate was covered. The street light was off, and the neighbouring shops were closed. He did not know why the two boys were kidnapped. He brought the scooter inside and kept, later police seized it from him. Smti Sashi Prava Devi said that her husband was serving in a tea garden, and another son worked at Marigaon, and with

her son Rajesh she stayed at Tezpur. She said that on 28.9.99 evening hr son Rajesh told her that Rajib's sister-in-law was serious and he would go to Sukhada Nursing home to see her and talk to them, but he did not return. Sankar Das, when examined said that he was a Pracharak of Madhab Dham and was not at the Dham on 28.9.99, but coming there on 29.9.99 he heard about the kidnapping from Jiban Barua, and the scooter was seized by police in his presence. Another pracharak Shri Lankeswar Das of Hajo was also not in Madhab Dham on 28.9.99. Shri Keshob Upadhyay had a neighbouring courier service, but he was not there on 28.9.99 Tezpur public ransacked the SULFA camp near Ananta Cinema and recovered police uniforms, damaged arms and cutting weapons, and all those were deposited before the Deputy Commissioner Shri Naba Kumar Chetia in presence of Brindaban Goswamy and Padma Hazarika. M.L.A.s., P.W.5 Sashi Prabha Mishra.

The Commission examined 12 P.Ws and 10 P.W.s (Public witnesses) in this case The P.W.s are: 1. Shri Prem Narayan Mishra, 2. Shri Ratan Dutta. 3. Shri Jiban Bora, Advo Shri Jatin Koch 5. Smti Sashi Prabha Devi. (Mother of Rajes Mishra). 6. Shri Bhola Koch (Father of Rajib Koch). 7. Shri Chailendra Bora. 8. Shri Bapdhan Koch, 9. Utsab Talukdar. 10. Shri Sampak Koch. 11. Shri Brindaban Goswami, M.L.A. and 12. Shri Padma Hazarika, M.L.A.

The N.W.s (Noticee witnesses) examined are: 1, Shri Gunadhar Das D.T.O. 2. Shri Rajendra Kumar. I.G.P.(OSD) 3. Shri Abu Safian. 4. Shri L.R. Bishnoi, S.P. 5, Shri Nilachal Bharali. O.C. 6. Shri Mahesh Ch. Bora. 7. Shri Tapan Ch. Sarma. 8. Shri Abhijit Boea, Addl.S.P. 9.. Shri Prafulla Kumar Mahanta M.L.A. 10. Shri Bibek Nath (SULFA). and 11. Shri G.M Srivastava, the I.G.P.(Operations) later promoted as Addl..D.G.P (Operations), Assam.

P.W. 1 Prem Narayan Mishra said that Rajesh Mishra had no enemies; his shop was Jyotishmarg Commercial; that night he left his house at 9.30 P.M. for Sukhada Nursing Home; P.W. 1 believed the lifters to be SULFAs and people gathered at P.O. mentioned Krishna Hazarika, Bibek Nath and Achintya Das; secret killers created terror in Tezpur; P.W. 5 Sashi Prava Devi, L.P. School teacher, said that she went to Dispur with a delegation of public representatives and met the Chief Minister Shri Prafulla Kumar Mahanta and told him to take steps to recover Rajesh Misra and Rajib Koch, and the Chief Minister remarked that his effigy was being burnt at Tezpur and the people were coming to him; and to this Sashi Prava retorted that though his effigies were burnt, he was still alive and so he was to do the needful in the kidnapping case; then the Chief Minister lightly said that he would see to it. She also said that at the Ananta Cinema SULFA camp besides arms, cutting weapons and uniforms, some records and diaries were also recovered and she, being asked, read aloud a diary which might be with Shri Brindaban Goswamy thereafter. She knew that Rajib Koch was a good boy and so Rajesh kept his company. Her house was once raided by police when some more houses in the neighbourhood were also raided. long back. She would like to talk to Krishna Hazarika and Bibek Nath just to know why they picked up Rajesh, but she was not allowed to do so.

P.W. 6 Shri Bhola Koch, father of Rajib Koch, said that when on 29.9.1999 he went to Madhab Dham about 20 people were already there and one of those told him that the two boys were kidnapped by Krishna Hazarika and Bibek Nath, and that those two were prowling at Tezpur as secret killers. Hearing this he was crest fallen. In cross he said that he knew Krishna Hazarika who lived near their village and also Bibek Nath who lived at Tezpur. He also said that his first son Munindra Koch died in a motor accident in 1994 and he did not file any motor accident claim. He said that on 29.9. 99

he found out the Choukidar of MadhabDham Shri Jiban Barua who told him that on the previous night when the two boys were arranging an ambulance, two police zypsies arrived and some people alighted therefrom and at gun point bade them into one of the zypsies and sped away together to the mandir side. P.W. 10 Sampak Koch said that his elder brother Bhola Koch's eldest son Munindra Koch was an ULFA and he was taken to Tezpur Sadar Police station several times and he died in an a police encounter in 1994. It seems there was some initial reluctance to disclose this information but they later decided to disclose it.. Bhola Koch also knew that Krishna Hazarika died but did not know how; and that Bibek Nath was alive. P.W. 2. Shri Ratan Dutta, one of the Joint Secretaries of the Tezpur Nagarik Mancha, an social organization for promoting justice and getting the guilty punished, was cross-examined before the Commission, on its delegation to meet different authorities in Delhi on the matter of Rajesh Mishra and Rajib Koch kidnapping and disappearance, as will have been clear from the case.:

Q, 3. Do you remember what discussion you made with the Hon'ble Prime Minister ?

A.- Two elderly members of the delegation Late P.N.Singha Ex. M.P. and Prof. Jiban Borah, Advocate, Ex.M.L.A.brought to the notice of the Hon'ble Prime Minister Shri Atal Behari Vajpayee that many people were killed in Assam by "secret killing"; then the Prime Minister expressed surprise and stated that he was unaware of such incidents, which were taking place in Assam. When we pointed out that it was the "package" of the Central Govt. as a result of which these things were happening, Prime Minister A.B.Bajpayee denied the same and he requested us to meet the then Home Minister Mr. L.K.Advani and to apprise the same. However, the Prime Minister assured us that the happenings of such things in Assam would be stopped immediately and on our return from New Delhi we have found that such killings have dwindled."

Shri Brindaban Goswami, M.L.A. answering a question whether it was so, and whether the Home Secretary of India scolded Assam Chief Minister for what he did, said: "I do not know anything about the statement by Shri Padmanabhaiya, but after the Tezpur incident also, there were sporadic instances of secret killings and I think, there is some nexus somewhere and this Hon'ble Commission will look into this aspect of the matter. In examination-in-chief Shri Goswami stated that he and Shri Padma Hazarika were present when a large number of people from the public were coming out in procession shouting slogans about the incident and also wanted to meet the Deputy Commissioner; and meeting Deputy Commissioner, they deposited "a large number of articles including clothes, police uniforms and a large quantity and variety of damaged firearms" and Goswami demanded that the complains be looked into.

P.W. 3 Jiban Bora said that Shri Brindaban Goswami, M.L.A. said in the Assembly that the two kidnapped boys were killed, and from that people thought that the Govt. knew by whom, how and why Rajesh and Rajib were kidnapped and killed.

The Official Report of the Assam Legislative Assembly debates. October-November Session No.3, the 2nd. Nov. 99 Zero Hour discussion. Mr Brindaban Goswami said: I informed the Administration about kidnapping of two youths (Yubaks) of Tezpur. Appeal was also made. I want to draw the kind attention of the Chief Minister, who is also holding the Home portfolio that from Tezpur Town two innocent youths, Rajesh Mishra and Rajib Koch were kidnapped; and even after long long time there has been no trace of them. This incident has caused serious repercussion among the public. Both the youths were subsisting on their own earnings The public knew that there were no complaints against them. Both of them were loved by the people Meanwhile the Government has suspended two high ranking police officers in connection with the said incident about four persons

have been detained I am not attacking any party. Of the four detained persons, one is congressman."

Shri Prafulla Kumar Mahanta. (Replying.P.79) Hon'ble member Shri Goswamy has raised certain matters. On last 29.9.99 one Bhola Koch of Tezpur Majgaon lodged an Ejahar at the Tezpur Sadar Police Station to the effect that his son Rajib Koch and his neighbour Rajesh Mishra were kidnapped on 28.9.99 at about 11.40 P.M. by unknown persons from Madhab Dham taking them into vehicle. And from investigation it was known. with respect to this a criminal case u/s. 365 I.P.C. a case has been registered. On investigation it was learnt that the kidnapped Rajesh Mishra and SULFA Bibek Nath a land dispute was going on. A plot of land near 155 Tezpur Base Hospital was purchased recently by J.P. Jadab, Secretary, Indian Tea Association. Shri Putul Bora, Advocate was willing to purchase the land, therefore, Shri Putul Bora asked SULFA Bibek Nath to take possession of the land. As against this, J.P. Yadav sought help of Rajesh Mishra and Rajib Koch, who offered help. Meanwhile Police has arrested Advocate Putul Bora and one Krishna Hazarika. On interrogation, Krishna Hazarika has denied complicity in the dispute. Shri Putul Bora has admitted having conspired and the District administration and police are trying to arrest Bibek Nath the main accused asked his brother-in-law Bibek Nath to take possession of the land, but has denied complicity in the kidnapping. There was some delay in investigation of the case for which the O.C. of Tezpur P.S. and the Additional S.P., Sonitpur were suspended. Efforts are on to find out the kidnapped boys, and police has been directed to see that such things do not recur. Govt. desires that none should try to create discord among the society taking advantage of this case. (Assam Legislative Assembly debates. October-November session) However, by now more than 5 years passed by. Yet the two boys have not been traced. The society is unanimously eager to know what has happened to the two boys.

Two facts are to be noted in this case. The first is that Krishna Hazarika later died in a police encounter at Jorabat, Guwahati. This was stated by Shri Bibek Nath in his cross-examination. The principle of "Kill and get killed" may also be deducible from it. Krishna Hazarika's name was there in the alleged secret killer's team, allegedly sent to North Lakhimpur, but was allegedly diverted to Dibrugarh where several instances of secret killings were reported. Incidentally, the districts of North Lakhimpur and Nowgong seemed to have remained free from secret killing incidents. Then Krishna Hazarika himself got killed.

The second fact is the deposition of Shri Bibek Nath before this Commission. In his examination in chief he said; (In Assamese) "*Moi Tezpurar Rajesh Mishra aru Rajib Kochak apaharanar katha 29.9.99 ot gom pao*" I knew about the case of kidnapping of Rajesh Mishra and Rajib Koch of Tezpur on 29.9.99, when the then S.P. of Sunitpur District, Tezpur Shri L.R. Bisnoi called me to meet him. On receipt of the call I telephoned to him. He asked me whether I was involved in the previous days incident of kidnapping of Rajesh Mishra and Rajib Koch. I said that I did not know about it. Then the S.P. told me that the people were suspecting that I was also involved in the incident and he asked me as to what I wanted to say. I said that at that time I was at home as usual and I do not know about the incident at all. I did not meet him but I spoke whatever I had to speak to him over phone. Then I came to Guwahati and met Shri G.M. Srivastava, the then I.G.P. (Operation), Assam. Then I told him that in that Tezpur's Rajesh Misra and Rajib Koch's kidnapping case, the people have involved me also. But I was not at all involved. Then the I.G.P. (operation) said that he would enquire into the case and that I should stay at Gauhati for about two months. Then I went back to Tezpur and surrendered. I do not remember the number of the Tezpur Police station case.

N.W. 4 Abu Sufian, D.S.P. Sonitpur district, Tezpur said that the Police could carry on searches and raids of its own, not with the Unified Command Structure, on information from police or paid sources, and they would do so after proper verification of the source of information and being certain that it did not come from extremist groups for ambushing us. He also said that the nature and extent of power in such raids on insurgent groups would depend on the nature and details of insurgent activities. Asked as to what extent such raiding parties could go and under what law, the witness said that it depended on circumstances in each case and under the general law of private defence provided for in the Indian Penal Code, and that when there was an encounter, they could go to the extent of killing the attackers in an encounter. On the question as to what was meant by an encounter he said that when the insurgents opened fire at them instead of responding to the call to them to surrender arms and themselves, there is an encounter and not otherwise. Interestingly no references were made to sections 130 to 132 of the Cr.P.C., nor to sections 144 and 145 of that Code. on powers to issue orders in urgent cases of apprehended danger, by Magistrate..

N.W. 5. Nilachal Bharali, O.C. Tezpur Sadar P.S. came to Texpur by transfer after thansfer of the original I/O amd remained there till 24.4.2000 the case was sent to CID, Gauhati on 25.3.2002. Till then no charge sheet was submitted in the case as no materials for charge sheet could be collected till then. N.W. 6 steadfastly stuck to the land dispute theory, despite none having been instituted in civil court and none of the parties in Tezpur P.S. case No.541/99 having been in any civil litigation as to any land. It is in evidence that the elder son of Bhola Koch, the elder brother of Rajib Koch was earlier killed in encounter with the army. This shows that the family of Bhola Koch was an ULFA family, and this alone brings the case in line with other ULFA family cases in this group. Other evidence in this regard has to be found out, if any.

The two boys, on record, are still missing which fact may be described , as the International Committee of Red Cross termed in case of Meghalaya missing persons; list, 'the most serious humanitarian problem' created by armed conflict or internal violence.'

The dictionary meaning of encounter is (V.I) to meet face to face. esp, unexpectedly: to meet in contest: to oppose in a meeting unexpectedly: a fight manner of neeting and accosting encontrar L. in contra, against. (Chambers)

It appeared that "encounter" proved to be the vanishing point of Constitutional and human rights to life and liberty. Cases have been referred where innocent card playing cow boys, friends gossiping in their working fields have been killed in the name of encounters. This should not be so. The "encounter" is surely not applicable to our own citizens, when they are unarmed and unalarmed, in their own lawful abodes or in their lawful working place for a lawful living. Cases of violation may be referred to Human Rights Commission and the Courts of law for redress. The Amnesty International and similar international bodies would also be relevant.

In cross examination Bibek Nath said:

"In connection with the incident of 28.9.99 I was asked by the O.C. Police station Sadar to come to the office of the S.P. then I telephoned to the S.P why I was called for. The S.P. told me that I was wanted in connection with this incident of Tezpur and he asked me whether I was involved in this case. Then I replied that I was not involved in this case. Then S.P. told me that the public pointed a finger of accusation towards me. Then I came to Guwahati and met the I.G.P Mr. Srivastava(then I.G.P.(Operations), The IGP told me that the situation there at Tezpur was tense and as I was the last of the surrenderees, the allegation was made against me. I was asked to surrender and that he would see to it after the situation improved. On receipt of this advice I remained in Guwahati for about two months. After two months I surrendered at the Tezpur Sadar P.S. and I was arrested in connection with the incident dated 28.9.99."

Shri Ghanashyam Murari Srivastava (N.W. No.11).the then I.G.P.(Operations) ,presently D.G.P., Tripura, in his deposition in

Q.No. 79, his attention being drawn to the question put to Mr. Bibek Nath Q.No. 10. in connection with the Tezpur case No. 541/99. Is it a fact that there was a discussion between yourself and Mr. Bibek Nath ? Is it a fact that you advised Shri Bibek Nath in connection with the case to stay at Guwahati and he gave his Guwahati address to you?

Answer : "I do not remember to have met this man Bibek Nath who in his statement contradicted himself almost in every point including showing his ignorance about the location of my residence where he claims to have met me. I have never stayed at Bhangagarh. My residence was at Ulubari. In the second point he has stated that he met me in my office. Similarly he also stated that he stayed here on my advice . But he did not give me his local address as well. So the ignorance and the contradiction in the statement given by Bibek Nath indicate that it is an attempt to cover himself by taking the name of senior police officer.

Q. 80. Did you evince any interest in this case of Rajesh Mishra and Rajib Koch of Tezpur, it being a case of very serious nature?

Answer : "Such kind of serious nature cases are generally discussed in the senior level meetings jointly and those present in the meetings give their views based on which the supervisory officers or senior officers visiting this location would definitely try to advise S.P. and others."

This shows that Mr. Srivastava did not categorically answer either of the questions. Even if the mistakes were there, the fact of his coming ought to have been categorically denied. So also in view of the statement that Bibek Nath met the I.G.P (Operation), whether he evinced interest in the case was also not categorically answered. The general statement of procedure did not answer the question. These statements made to high police officers, even if true, may be of no evidentiary value either for inculcating or exculpating Bibek Nath. But, if true, their being in talking terms under those circumstances may be noticed.

Mr. Srivastava was issued notice under section 8B of the Act because there were allegations of unholy nexus between the police and SULFAs; and even otherwise it was horrible to see an accused person meeting so high an officer as the I.G.P. (Operation) before surrendering either to O.C. or the S.P. or any high level police officer in the district.

Mr P. K Bora I.A.S.(Retd) who was the Chairman of the Strategy Group at the State level of the Unified Command Structure stated in para 3 of his affidavit that the United Command was required to synergise counter insurgency operations conducted by

Army, Central Police Organizations and State Armed Police Force. It was also to do crisis management and to monitor the proceedings of the District level Co-ordination Committees. In para 5 of his affidavit Mr. Bora stated that he presided over a number of meetings of the Strategy Group at the State level and that "These were no way involved in the 'secret killings' and this deponent does not believe that the United Headquarters were involved either. The preoccupation of the Unified Headquarters was to carry out operations against the insurgents and not against any member of their families." This statement remained unchallenged in cross-examination.

Investigation report dated 17.4.2002 by the S.P. Sonitpur, Tezpur shows that Krishna Hazarika did confess to kidnapping the two boys when interrogated, but declined it before the Court u/s 164 Cr.p.c. The admitted fact that two accused were arrested, but they escaped on way to thana was indicative of criminal negligence or complicity. The learned senior counsel submits that the kidnapping has not been denied by anybody; and that the then Hon'ble Chief Minister of Assam made a statement about it on 2.11.99. Number of officers deposed before the commission and they could not say whether the boys are alive or dead. Mr P.K. Musahari, the learned senior Govt. Advocate submitted that almost all the witnesses deposed that the SULFA camp of Ananta Cinema was ransacked by the Tezpur public and recovered police uniforms, cutting instruments and damaged arms which were deposited in the D.C.'s office. Shri Krishna Hazarika, accused, admitted in statement u/s 161 that he with Bibek Nath and some Bibek Nath's friends kidnapped Rajesh Misra and Rajib Koch, but he declined to make the confessional statement u/s 164 Cr.P.C. before Shri P. Bora Judicial Magistrate before whom it was to be made. Representation was made to the President of India and was furnished to the Commission...

P.W. 10 Champak Koch said that Munindra Koch was ULFA and was detained by police. This was corroborated by L.R. Bisnoi, then S.P. deposing that the O.C. told him that Munindra Koch died in an encounter in 1994..

The fact that within days after the incident the wrath of the Tezpur public fell on the Sulfa camp which was ransacked and incriminating arms and ammunition, other cutting weapons and police uniforms were recovered and publicly deposited with the D.C. left no manner of doubt that the occupants thereof were the culprits and that they enjoyed protection from police. Transfer of the concerned officers would not absolve them of their complicity in the crimes perpetrated.

In the Report of the Magisterial Inquiry dated 7.11.99, conducted by Shri T.C. Sarmah, the Additional Deputy Commissioner, Sonitpur, Tezpur there is a request "to keep this report secret." Accordingly it is not discussed. In the earlier report dated 8.10.99 there was no such request, but the fact that a re-inquiry was ordered thereafter, it could not be said to have been accepted by the Administration.

The investigation of the case seems to have been waylaid by the land deal to which neither of the kidnapped boys nor his family was a party or privy thereto. Investigation report dated 17.4.2002 by the S.P., Sonitpur, Tezpur, shows that Krishna Hazarika did confess to his crime of kidnapping the two boys when interrogated, but declined it before the Court u/s 164 Cr.p.c. The admitted fact that the two accused were arrested, but they escaped on way to thana, was indicative of either criminal negligence or complicity.

Rajesh and Rajib have not been seen or heard of so far by those who would have heard of them had they been alive. The moment of their being dragged into the two Maruti Zypsies and taking them away was the beginning of their disappearance. That was the last moment the lifters and the two boys were seen together. Therefore, those lifters have to be held responsible

for what is proved to have happened to Rajesh and Rajib. However, the lifters have to be found guilty. As early as in 339 B.C the great philosopher Socratis was accused of not believing in the gods of Athens and of corrupting young men's minds. He was found guilty and put to death. So to find one guilty there has to be a trial. This Commission is trying to find out the facts on the basis of evidence on record. But it is not a criminal court. Whether the State Govt. may find some material in this report so as to be of use, as the case is still pending, will be a different matter.

The Superintendent of Police, Sonitpur, Tezpur Shri L.R. Bisnoi submitted to the Hon'ble Justice Meera Sarma Commission a detailed reply dated 17.5.03 to the two memoranda submitted to that Commission stating, *inter alia* that The I/O had seized the scooter No.AS128664 from Madhab Dham. Since the date of kidnapping and throughout the investigation the names of Krishna Hazarika and Bibek Nath have been constant as accused in the case. Both of them were arrested and they escaped on way to police station. Mr Putul Bora, Advocate was arrested in connection with the land deal, but we have seen that the case has since assumed a different character and that name has become irrelevant. Of the two constant persons, who have been named by the parents and other witnesses before the Commission, Shri Krishna Hazarika, as has been informed by Shri Bibek Nath, as also published in news papers, has died in an encounter at Jorabat, Guwahati. The other person Shri Bibek Nath has, meanwhile, been examined and cross-examined before the Commission. His complicity in the kidnapping, and for that matter, disappearance of the two kidnapped boys may be ascertained from his replies in cross-examination: On the morning of 29.9.99 he was called by the O.C. Tezpur Sadar P.S. Mr. Buragohain; he came to the police station in that morning itself; on his way to the police station with the O.C., at the Maha bhairab crossing he telephoned from a PCO to S.P. Tezpur Shri L.R. Bisnoi; he knew that Tezpur public implicated him in this case; he came to Guwahati of his own; he telephoned to Shri G.M. Srivastava then IGP(Operations, Assam) before he came to Guwahati; arriving by bus, he telephoned to The IGP(Operations); **he telephoned to Shri L.R. Bisnoi**, S.P, Tezpur before he came to Guwahati; When he came the residence of Srivastava was at Bhangagarh, Guwahati; he met him at his residence; he used to come to him earlier also and meet him at his office; Srivastava advised him to stay at Guwahati; his surrender also was as per G.M. Srivastava's advice given at his Guwahati office; As the case was already there against them Srivastava advised him that it would be better for him to surrender; He then went back to Tezpur and informed the S.P. Mr. Bisnoi about it; he went to Tezpur on the very same day he was advised by IGP(Operations) Srivastava and met the O.C. Tezpur P.S. and immediately surrendered. He met IGP (Operations) only once after the incident. He used to meet I.G.P.(Operation) earlier also at Guwahati; Srivastava advised him to surrender because the case was already there, He did not inform Mr. L.R Bisnoi about it. He contacted S.P. before coming to Guwahati over phone and S.P. told him that he was involved in the case, but he denied it. He Knew only the S.P. and the I.G.P.(Operations) and no other police officer. He surrendered in S.P.'s office at Tezpur.

Questioned about the kidnapping incident Bibek Nath said: he was arrested after 28.9.99 because he managed to escape from the police custody earlier. and he was arrested in connection with this case after he surrendered after returning from Guwahati. He did not know why the Tezpur public suspected him, and that Krishna Hazarika died in an encounter with police at Guwahati. He denied the suggestion that he was in the same car when the encounter took place, and said that he met Krishna Hazarika at Tezpur Chowkbazar in the afternoon when he(Krishna) started for Guwahati in a Tata Indica car. He said that no incident

of killing occurred at Tezpur after this incident. He did not know about the activities of Tezpur Nagarik Mancha, including its Delhi delegation.

On the basis of the above evidence and discussion the Commission would identify Shri Krishna Hazarika (since deceased), and Shri Bibek Nath as the kidnappers. It would also identify Shri Achintya Das and all those who aided, abetted or facilitated the kidnapping, including Govt. agencies, as the accomplices. In case of disappearance and subsequent presumption, and even death, if proved, the same persons and Govt. agencies and abetors would be liable, the kidnapped boys having been last seen together with them.

(C) Whether there was any conspiracy in targeting the victims and the motive behind such kidnapping and disappearance.

This term is answered in two parts, (I). Conspiracy and (II). Motive.

- (I) Conspiracy.** in targeting the victim. Conspiracy in the context of the instant inquiry, will mean criminal conspiracy as defined in Section 126A of IPC as follows:-
 “when two or more persons agree to do or cause to be done :-
 (1) An illegal Act, or
 (2) An act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:’

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.- It is immaterial whether the material Act is the ultimate object of such agreement or is merely incidental to that object..

Abetment of a thing. As defined in Section 107 of the Indian Penal Code (IPC)

“ A person abets the doing of a thing, who-

First- instigates any person to do that thing; or

Secondly- engages with one or more other person or person or persons in any conspiracy for the doing of that thing. if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly, institutionally aids, by any act or illegal omission, the doing of that thing.

Explanation -1. A person who, by wilful misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.; or (Illustration omitted).....

Explanation -2 Whoever either prior to or at the the time of commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act” The law and jurisprudence of conspiracy has been discussed in para 10 of the Introductory part of this report; the same is referred to. The question whether there was any conspiracy or not in the kidnapping and disappearance of Rajesh Mishra and Rajib Koch has to be decided on the basis of the law, and facts in evidence on record, In case the answer is in the affirmative, then also the question will be as to who were the conspirators ?. It is in evidence that Rajesh Mishra and Rajib Koch were dragged into a vehicle and taken away by Krishna Hazarika and Bibek Nath. So they were perpetrators. Achintya Das was said to have been driving one of the vehicles.

Of the vehicles. This evidence is on record. He will be an accomplice with the SULFA camp dwellers near Ananta Cinema of Tezpur.

(II) Motive. In this case three hypotheses had to be tested; The police investigation proceeded on the hypothesis that there was a land deal in which Rajesh and Rajiv got involved on the one side and Bibek Nath, with Putul Bora on the other. This was not proved and Putul Bora, though arrested, had to be released.. Second hypotheses suggested in an application made to the President of India was that the SULFAs were involved in private property disputes for their gains. There was no evidence before the Tribunal in proof of such a hypothesis. The third is that of a package deal from Government, Central or State. Witnesses deposed that the Tezpur public went to Delhi, held a dharna there and first met the then Hon'ble Prime Minister Atal Behari Bajpai and told him that secret killing was their package and the same should be stopped. Mr. Bajpai then said that it was not their package, and told the delegation that on their return they would find some result; and he advised the delegation to meet the then Home Minister Mr. L.K.Advani. On meeting him Mr. Advani also is said to have replied similarly. The witnesses assert that after thie coming back from Delhi, the secret killings gradually dwindled. This is indicative of some causal connection between the two. Another witness deposed that it was common knowledge at Tezpur that the SULFAs who killed people were rewarded at the rate of Rupees three lacs per head; and that is why they were prowling about to kill innocent persons. This might or might not have been true, but the circulation of such a belief itself could provide a motive for the killing So it can be said that some immediate financial gain could nave been the immediate motive; and the ultimate motive could be for political gain.

(F) Any other matter related or relevant to the inquiry

Shri Bapdhan Koch while deposing prayed for a definitive finding as to the status of Rajesh Misra and Rajib Koch and disclosed that in the absence of such a finding their families have not so far performed their last rights. It is true that the case started as one of kidnapping but somehow later it came to be considered as one of killing and thus included in the list of cases referred to this Commission. At the outset it is made clear that this Commission is only a fact finding body and not a civil Court. Therefore, it cannot give any declaration of death. Such a declaration will involve questions of succession and inheritance of their estates. Accordingly civil Court is the proper forum for that purpose. However, the Commission can, on the basis of evidence arrive at a finding on the deaths as facts. But the Commission may not be justified in arrivng at such a finding, without proof of the corpus delicti, i.e., that the killing has been done by someone. Such a finding may be justified if the body of the person alleged to have been killed is found, or there is evidence either direct or circumstantial, of the death of the person alleged to have been killed. If the evidence is circumstantial, it must be so cogent and compelling as to convince that upon no other rational hypothesis than being killed the facts be accounted for. In the absence thereof, the question will be whether a presumption of fact of death could be drawn. Passage of time from his last being seen is one of such circumstances. The time varies from country to country. Since death involves question of rights the period should be safely decided.. To take guidance from English law, W.M.Best on "The Principles of the Law Of Evidence", 9th ed, p.344. S.409 writes:

"The fact of death may, however, be proved by presumptive as well as by direct evidence. When a person goes abroad, and has not been heard for a long time, the presumption of the continuation of life ceases at the end of seven years from the period when he was last heard of. And the same rule holds generally in respect to persons who are absent from their usual places of resort, and of whom no account and for whom no account can be given. But there is no fixed limit of seven years." This period of seven years is based on English statute. Where

question of property rights are involved, it is reasonable to wait for a period applicable thereto. For example, The Presumption of Life (Scotland) Act, provides for the period of thirteen years. Phipson on Evidence (9th ed. P.701) writes that "in one case the Court refused to presume death from unexplained absence under suspicious circumstances after twenty years." (Re. Lidderdale, 57 S.J. 3) Accordingly, we may wait for twelve years or so, unless otherwise proved earlier. In the instant case, the two youths were last seen at the Madhav Dham at about 11.45 P.M. on 28.9.1999, being dragged forcibly into one of the two white Maruti zypsies, and no more thereafter. The abductors were evidently believed to have been prowling secret killers, who could, therefore, be taken to have caused their disappearance. Shri Brindaban Goswami, then M.L.A. from Tezpur Constituency, reportedly made a statement about the killing of the two youths. Lastly, the State Government has included this case among the other cases of secret killing. From 28.9.1999 till date, nearly six years have elapsed. Considering all the above circumstances, a presumption of the facts of deaths of the two youths, namely, Rajesh Mishra and Rajib Koch may not now be reasonably drawn; and so it is found as a fact.

The following common characteristics of the first group of seven cases are found in this case. while answering its terms of reference so as to justify a finding of a general plan of "Ulfoside" i.e., deliberate killing of ULFAs and their relatives on their basis. namely: Common elements. Some common elements have been conspicuous in the seven cases taken up in this report. Firstly, all of these killings were done in ULFA or ULFA related families. Secondly all the killings were done under cover of darkness in unearthly hours of dead of night, except in case of Dimba Rajkonwar wherein darkness came soon after the shots were fired. In the evening of 27.11.1998, Barama killings were done at about 12 in midnight when all around were fast asleep. Ananta Kalita was taken from his house at dead of night and he was taken from the A.P.B. camp to the hill crest and shot at midnight. In Tezpur case Rajesh Misra and Rajib Koch were lifted at midnight. This element is indicative of a centralized preplan to perpetrate the crimes.

Second, in all the cases there appear to have been utilization of Sulfa men to act in concert with the policemen. This means the creation of an extra-constitutional authority for extermination of the victims, somewhat like that of the Nazi Gestapos.

Third, in the cases other than that of Dibrugarh, Police vehicles were used and police uniforms were there. Fourth, mostly small arms were used, but the Sulfas were evidently not provided with such arms, though the P.S.O. s provided to them were.

Fifth. In all cases the investigations were waylaid by tangential matters, resulting in "no clue" and final report and fizzling out of investigations

Sixth, there was no gesture of condolence from the side of the Government in any of the cases.

Seventh, In none of the cases there was any ex-gratia or compensatory payments made by the Government. Eighth, none of the victims or their family members belonged to the then AGP

Ninth, There was the Unified Command Structure, but their presence or authorship in the killings was neither claimed nor visible.

Tenth, the Armed Forces Special Powers Act was not invoked. and, therefore not applicable.

The facts of Ananta's kidnapping and attempted killing are reminiscent of Machiavelli's Prince (Chapter 8) and the Nazi's "Gestapo". The former, *inter alia*, discusses how to attain the position of Prince by "villainy" meaning based on treachery and cruelty, f h

Gestapo, because of lifting the innocent victim from his castle (every man considers his home, however small it may be, to be his castle for protection) with a view to destroy him, trampling over his legal, fundamental; constitutional and human rights. As encyclo ppadias say, Gestapo (in full-*geheimstates polizei* meaning German Secret State police, is the German political police of Nazi Grtmany, created by Herman Goering from the political and espionage units of the Prussian police and by He.nrich Himmler, who was given command in 1934, from the police of the remaining German States. The Gestapo operated without withpit civil trestraints, and its actions wered not subject to judicial appeal.. Thousands of jews, leftists, intellectuals , trade unionists and political clergies h disappeared in concentration camps after being arrested by the Gestapo. In World War II the Gestapo suppressed partisan activities in thw occupied territories , and a section of the Gestapo under Adolf Ichman organized the deportayion of the Jews to the extermination camps pn Poland.

The SULFA camp ransacked by Tezpur publicwith studded details can be described as veritable concentration and extermination camp maintained by the SULFA in utter violation of the Constitution and the laws The operation of lifting the victims at night from Madhab Dham with violence and taking him to the concentration camp by masked Sulfa men in Police likevehicles constituted a Gestapo action having Gestapo effect. The taking of the victims and their disappearance was an axct to cause their disappearance. The perpetrators are liable for all these actions under the laws of the country.

Gestapo which was the "primary instrumentality of oppression." Thousands of jews, leftists, intellectuals, trade unionists and political clergies disappeared in concentration camps after being arrested by the Gestapo.

© Whether there was any conspiracy in targeting the victim and the mofjve behind such killing.

(I) Conspiracy.

(II(Motive.

This term is replied in two parts, namely, conspiracy in targeting, and motive for killing.

I. Conspiracy.in targeting the victim. Conspiracy. in the context of the instant inquir,will mean criminal conspiracy as defined in Section 126A of IPC as follows:.

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Explantation -1. A person who, by wilful misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing; or (Illustration omitted).....

Explantation -2 Whoever either prior to or at the time of commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act”.

The law and jurisprudence of conspiracy has been discussed in para 10 of the Introductory part of this report; the same is referred to. The question whether there was any conspiracy or not in the kidnapping and disappearance of Rajesh Misra and Rajib Koch has to be decided on the basis of the law, and facts in evidence on record, In case the answer is in the affirmative, then also the question will be as to who were the conspirators ?. It is in evidence that Rajesh Misra and Rajib Koch were kidnapped from the front of Madhab Dham and in connection with the case Krishna Hazarika and Bibek Nath were arrested and thereafter the two boys have disappeared. Shri Achintya Das was said to have driven one of the two Maruti Zyosy vehicles that appeared at Madhab Dham, though it was not in evidence whether he was driving the vehicle into which the two boys were dragged. These three, particularly the two namely Krishna Hazarika and Bibek Nath, Achintya Das, the SULFAs who helped from the Ananta Cinema SULFA camp, those who helped abetted and excited them in the act, and the Govt. agencies that collaborated must be held to have been the conspirators.

II. Motive. Behind the kidnapping and disappearance may be analysed as direct or immediate, and the ultimate. Any judicious finding as to the motive of kidnapping and disappearance of Shri Rajesh Misra and Rajib Koch has to be based on an analysis of the events in their lifetimes vis-à-vis the kidnappers. Till the date of the incident.. The kidnappers allegedly asked the two boys not to enter into the land deal. They were also last seen with the kidnappers near the Madhab Dham before they were sped away in a Maruti Zypsy vehicle. The two boys having not been seen thereafter the kidnappers have the obligation to explain the disappearance. When so analysed, in this case three hypotheses had to be tested; The police investigation proceeded on the hypotheses that there was a land deal in which Rajesh and Rajib got involved on the one side and Bibek Nath with Putul Bora on the other. Shri Bibek Nath in his deposition clearly denied that there was any land deal involving him and Putul Bora. However, mere denial would not efface what was already there in evidence. The second hypotheses suggested in an application made to the President of India was that the SULFAs were involved in private property disputes for their gains. The copy of the representation is on record. The third is that of a package deal from Government, Central or State. Witnesses deposed that the Tezpur public went to Delhi, held a dharna there, and first met the then Hon'ble Prime Minister Shri Atal Behari Bajpa and told him that secret killing was their package and the same should be stopped. Shri Bajpai said that it was not their package and told the delegation that on their return they would find some result; and he advised the delegation to meet the then Home Minister Mr. L.K. Advani. On meeting him Mr. Advani also is said to have replied similarly. The witnesses assert that after their coming back from Delhi, the secret killings gradually dwindled. This is indicative of some causal connection between the two. Another witness deposed that it was common knowledge at Tezpur that the SULFAs who killed people were rewarded at the rate of Rupees three lacs per head; and that is why they were prowling about to kill innocent persons. This might or might not have been true, but the circulation of such a belief itself, if its circulation was true, could provide a motive for the killing.

Questioned on the two cases, namely, that of killing of Dimba Rajkonwar and that of Dr. Dharanidhar Das and family, Shri G.M. Sroavastava said (A., 88) Normally police compares the cases on the basis of *modus operandi* and circumstances. In this case I have not seen the case diary nor I have seen the statements. But the reason and motive behind the killings may come out only after thorough investigation of the situation and examining in detail every aspect and possibilities by investigation officers and the officers of supervisory level.

The immediate motive of the kidnappers and attempters could be any reward or satisfaction emanating from those who harboured the ultimate motive and engaged them. The desire of a consequence is the motive for an action, Intention and motive are often used synonymously. In criminal law the question of motive is not material where there is direct evidence of the acts of the accused and the acts themselves are sufficient to disclose the intention of the actor. In such cases while, motive is immaterial, intention is material.. In the Explanation to section 161 IPC "a motive or reward for doing is illustrated as - a person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done. In this sense, motive of the kidnapping and disappearance is to reduce strength of the ULFA and to boost the AGP, annihilate its opponent ULFA and perpetuate its governance, for which the kidnappers have committed the crimes, and without which they would not have committed those crimes.. We have to ascertain from the circumstances, anterior, contemporary and posterior to the incidents. (discuss evidence)

(D) Pinpointing responsibility on persons involved directly or indirectly in commission of killing

This is the most difficult task of the Commission. In the absence of effective direct evidence, we have to depend on relevant circumstantial evidence. That too is not forthcoming in such measures as could help us in pinpointing responsibility on the persons involved. Fortunately the term of reference mentions "involved directly or indirectly in commission of killing" This enables us to act on basis of integrated evidence rather than on isolated ones. We have therefore to integrate such parts of evidence as will lead to a conclusion beyond reasonable doubt, for pinpointing responsibility. Besides what are found in relevant pieces of evidence, the common characteristics found in each individual case also throw some light.

The best evidence rule. "Phipson on Evidence," 9th ed. P. 51 under caption : "The Best Evidence Rule. Strict Proof" Says: "The maxim that "the best evidence must be given of which the nature of the case permits," has often been regarded as expressing the great fundamental principle upon which the law of evidence depends. Although, however, it played a conspicuous part in the early history of the subject, the maxim at the present day affords but little practical guidance. The applicability of the rule depends on the nature of the subject to be proved. In the complicated nature of things today the emphasis has somewhat changed. (P. 53) According to Phipson, "In the present day, then, it is not true that the best evidence must, or even may, always be given, though its non-production may be matter for comment or affect the weight of that which is produced. All admissible evidence is in general equally receivable. Thus, circumstantial evidence is no longer excluded by direct, and even in criminal cases the *corpus delicti* may generally be established by

either species, or, indeed, by the defendant's mere admissions out of Court".

The following common characteristics of the first group of seven cases are found in this case. while answering its terms of reference, so as to justify a finding of a general plan of "Ulfoside" i.e., deliberate killing of ULFAs and their relatives on their basis. namely:

1. That this killing involved an ULFA family, being that of the ULFA Chief Shri Arabinda Rajkhowa, and its investigation is kept pending but no clue..
2. Unlike in other cases, this killing, of Dimba Rajkonwar, were committed the evening light, but light was off immediately thereafter, to allow the assailants to escape under darkness.
- 3.. The assailants covered their faces with black wrappers and caps, to avoid being identified.
- 4.t The weapon used in killing was a firarms of prohibited bore being .32/.38 bores generally found in police-military situations
5. The firearms being of prohibited bores, forensic examination of the material exhibits was avoided.or unduly delayed. The report was collected long after. Investigation fizzled out..
6. The vehicle used was reportedly a red coloured Yamaha Motor cycle without number plate which was never seized or taken into custody, despite having one answering the description,.informed by its owner..
7. There were police patrolling in the crime areas prior and posterior to, but not during the killing.
8. That the army was ubiquitous. There was lurking evidence of Police-SULFA nexus in the killing, some of the latter being constituted into an extra-constitutional authority and used as the triggerers..the *modusoperandii* being *to visit the family, ask members to persuade its ULFA member to surrende*, failing which, to come afterwards and shoot /them dead,?.
9. There was general resentment and decry against the Unified Command Structure/ Chief Minister..
10. There was connivance of SULFA; and omission to make any SULFA an accused despite clues..
11. The investigation did not commensurate with the seriousness of the crime perpetrated..
12. That modern scientific methods of investigation, finger/foot prints, dog-squads were never used.
13. No condolence message was sent from the Govt. of Assam to the victim family.
14. No ex-gratia/compensatory payment was made or offered by the Govt. of Assam.in this case.
- 15 In this case death penalty has been imposed for "status offences," on Dinba Rajkonwar for being a member of ULFA family of the ULFA Chief Shri Arabinda RajkonqE..
16. From some cases "remote orchestration" and principle of "kill and get killed" are deducible.
remote might be at Home. This conclusionis based on the similarities of the seven cases in all repects, which could not be so unless there was remote orchestration from higher authorities.The remotewas supposed to be at Home.

Shri Bapdhan Koch while deposing prayed for a definitive finding as to the status of Rajesh Misra and Rajib and disclosed that in the absence of such a finding their families have not so far performed their last rights. It is true that the case started as one of kidnapping but somehow later it came to be considered as one of killing and thus included in the list of cases referred to this Commission, At the outset it is made clear that this Commission is only a fact finding body and not a civil Court. Therefore, it cannot give any cevlaration of death. Such a declaration will involve questions of succession and inheritance of their estes. Accordingly civil Court is

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"The fact of death may, however, be proved by presumptive as well as by direct evidence. When a person goes abroad, and has not been heard for a long time, the presumption of the continuation of life ceases at the end of seven years from the period when he was last heard of. And the same rule holds generally in respect to persons who are absent from their usual places of resort, and of whom no account and for whom no account can be given. But there is no fixed limit of seven years." This period of seven years is based on English statute. Where question of property rights are involved, it is reasonable to wait for a period applicable thereto. For example, The Presumption of Life (Scotland) Act, the period is thirteen years. Phipson on Evidence (9th ed. P.701) writes that "in one case the Court refused to presume death from unexplained absence under suspicious circumstances after twenty years." (Re. Lidderdale, 57 S.J. 3) Accordingly, we may wait for twelve years or so, unless otherwise proved earlier. In the instant case, the two youths were last seen at the Madhav Dham at about 11.45 P.M. on 28.9.1999, being dragged forcibly into the two white Maruti Gypsies, and no more thereafter. The kidnappers were evidently believed to have been prowling secret killers, who could, therefore, be taken to have caused their disappearance. Shri Brindaban Goswami, then M.L.A. from Tezpur Constituency, reportedly made a statement about the killing of the two youths. Lastly, the State Government has included this case among the other cases of secret killing. From 28.9.1999 till date, more than six years have elapsed. Considering all the above circumstances, a presumption of the facts of deaths of the two youths, namely, Rajesh Mishra and Rajib Koch may not now be reasonably drawn; and so it is found. The Government of Assam is said to have some rule or principle of not paying compensation unless five years have elapsed from the supposed date of death. Under this rule or principle, the Government may not refuse to make compensatory payment for Rajesh Mishra and Rajib Koch.

(E) Recommendations to prevent recurrence of such killings.

With its limited knowledge, experience and wisdom, to prevent recurrence of such killings, the Commission would like to make twofold recommendations, namely, (1) the immediate, and (2) the long term.

- (1) The immediate measure is, first to try to keep in abeyance, and then gradually dismantle the existing Unified Command Structure, which is by an order of His Excellency the

Governor of Assam and not by any statute or a statutory order. It is an arrangement agreed to by the Centre and the State Govt. regarding deployment and operation of the armed forces and other forces of the Union deployed by the Central Govt, "in aid of civil power" of the State of Assam, on request/ requisition by the State Govt. The Structure itself envisages its review after every three months, and there is no limit to the review and may even envisage its dismantling. The parties concerned may agree to dismantle it in the same way they agreed to create it. The constitutional position as to deployment of the armed forces and other forces of the Union in a State has already been discussed in para 14 of "Part I. INTRODUCTORY." of this report and is referred to in this context. The deployment of the armed forces and other forces of the Union in the State of Assam has been "in aid of the civil power of the State." In case of the civil power of the State being sufficient enough to cope with its civil problems, *ex hypothesi*, there is no need of armed forces or other forces of the Union for the State. The armed forces and other forces of the Union were deployed to cope with the internal disturbance thought to have been caused by the activities of the banned outfits disturbing the area leading to its declaration as a disturbed area under the Disturbed Areas Act. However, the disturbance has to a great extent been under control. The life in the State has become normal. The last Assembly election could be held without any disturbance, thanks to the co-operation of the local banned outfits. This may be an appropriate time for effective talks with the local outfits to observe cease fire, first for a short period, say six months, and for gradually longer and longer periods, and for restoration of normalcy and confinement of the armed forces and other forces of the Union to the barracks, and on continuation and assurance of normalcy, ultimately withdraw, on an assurance of peace on the part of the banned outfits and ultimately lifting of their bans themselves. To achieve this, strenuous, but cordial, talks between the outfits, the State Government and the Central Govt would be necessary; and there is no reason why such talks should not succeed. Restoration of normalcy. Disturbance and insurgent activities invited the Unified Command Structure. It is in the hands of the people to assure that peace will be maintained and insurgent activities will be curbed and normalcy will be restored. If the public are serious in this restoration of normalcy, there can be no earthly reason why such a situation cannot be brought about by mutual co-operation of the State and its people. Modalities may be worked out in consultation and cooperation among the Government, the political parties, student organizations, the outfits and the general public. Restoration of normalcy will also effect economy. Meanwhile, in the interest of peace and tranquility, there should be no witch hunting. Constitutionally speaking, restoration of normalcy is the terminus of internal disturbances and army deployment in the State. Normalcy will also make the Unified Command Structure redundant and incongruous.

- (2) The long term measures are meticulous observation of the provisions of the Constitution and the laws in carrying out each and every function of the government. All the departments of the Government must function faithfully in accordance with the mandatory provisions of the Constitution of India. In other words, the **long term measures** may include, in the long run, the faithful obedience to, and implementation of, the Constitution and the laws of the country. The Centre-State relationship must also be in accordance with the mandates of the Constitution. Guidance of the famous Sarkaria Commission's report will be helpful in this regard. Manusmriti said (Buller) VIII, 351. "By killing an assassin the slayer incurs no guilt, (whether) he does it in public or secretly; in that case, fury recoils upon fury." 386. "That king in whose town lives no thief, no adulterer no defamer, no man guilty of violence and no committer of assaults attains the world of Sakra (Indra)"; 420. "A king who thus brings to a conclusion all the legal business enumerated

above, and removes all sin, reaches the highest state (of bliss)” **Sukracharya’s Dandaniti is based on danda**, meaning, punishment. Ancient sages said that without *danda matsyanyaya will prevail* and the strong will devour the weak, even the sacred *prasada* of the *yajna* will be swooped at by crows. *Danda* keeps awake when the country is asleep. All people have innate goodness in them, but some do not. In the absence of punishment those will demoralize others in the society. The norms and laws of today are not materially different. Secret killing amounts to denial of all the constitutional, legal and human rights to the killed, and violation of all these rights by the killer. If killing is by public authorities, it also means trampling over the oaths taken by them on assumption of public offices. The society need be protected from the people with such dangerous propensities. It is trite learning that every action has a reaction, fury generates fury and that brutalities generate more brutalities. Continuous disturbance of the even keel of the society and some excesses committed by some elements had to be checked by equally harsh measures, but that would not justify the lawfully established Government in abdicating its powers, duties and responsibilities to extra-Constitutional organs jeopardizing the legal, fundamental and human rights of the citizens of sovereign, socialist and democratic Republic of India.. Those who are entrusted by the people to govern them, ought to be well versed with the provisions of the Constitution of India and the relevant laws, rules, and administrative instructions, and orders framed thereunder. They should be aware of the constitutional limitations as also the rights of the citizens of the State against their State itself. Fundamental rights of citizens, including rights to life, liberty, freedoms, non-discrimination etc. must not be violated. They must never have propensity to kill the citizens they govern, secretly or openly. They must not harbour any kind of hatred or dislike on numerical, religious, communal, racial, ethnic, social, historical, or of any sort whatever. At the minimum they should be true to their oaths and be absolutely free from corruption in any form and manner.. While no training course will be appropriate, considering their exalted position and prestige, periodical seminars and discussions at government levels may refresh their knowledge and experience. The Police department is the first resort of the people for protection of their life, liberty, property etc. Spreading disaffection towards police is an offence. Everyone has the duty to help police in restoring law and order in society. There is no doubt that our Police force is one of the best in the country. To make our police still more and more efficient and instructed, some officers, by turn, may be sent for advanced training in detection and decision in modern crimes and criminal practices. Such trained police personnel may be put in the police training College. They should undergo a training course in human right and cyber and other present day crimes and crime prevention.

(F) Any other matter related or relevant to the inquiry

Shri Bapdhan Koch while deposing prayed for a definitive finding as to the status of Rajesh Misra and Rajib and disclosed that in the absence of such a finding their families have not so far performed their last rights. It is true that the case started as one of kidnapping but somehow later it came to be considered as one of killing and thus included in the list of cases referred to this Commission. At the outset it is made clear that this Commission is only a fact finding body and not a civil Court. Therefore, it cannot give any declaration of death. Such a declaration will involve questions of succession and inheritance of their estates. Accordingly civil Court is the proper forum for that purpose. However, the Commission can, on the basis of evidence arrive at a finding on the deaths as facts. But fact unless the Commission may not be justified in arriving at such a finding, without proof of the *corpus delicti*, i.e., that the killing has been done by someone. Such a finding may be justified if the body of the person alleged to have been killed is found, or

there is evidence either direct or circumstantial, of the death of the person alleged to have been killed. If the evidence is circumstantial, it must be so cogent and compelling as to convince that upon no other rational hypothesis than being killed the facts be accounted for. In the absence thereof, the question will be whether a presumption of fact of death could be drawn. Passage of time from from his last being seen is one of such circumstances. The time varies from country to country. Since death involves question of rights the period should be safely decided.. To take guidance from English law, W.M.Best on The Principles of the Law Of Evidence, 9th ed, p.344. S.409 writes:

“The fact of death may, however, be proved by presumptive as well as by direct evidence. When a person goes abroad, and has not been heard for a long time, the presumption of the continuation of life ceases at the end of seven years from the period when he was last heard of. And the same rule holds generally in respect to persons who are absent from their usual places of resort, and of whom no account and for whom no account can be given. But there is no fixed limit of seven years.” This period of seven years is based on English statute. Where question of property rights are involved, it is reasonable to wait for a period applicable thereto. For example, the Presumption of Life (Scotland) Act, the period is thirteen years. Phipson on Evidence (9th ed. P.701) writes that “in one case the Court refused to presume death from unexplained absence under suspicious circumstances after twenty years.” (Re. Lidderdale, 57 S.J. 3) Accordingly, we may wait for twelve years or so, unless otherwise proved earlier. In the instant case, the two youths were last seen at the Madhav Dham at about 11.45 P.M. on 28.9.1999, being dragged forcibly into the two white Maruti Gypsies, and no more thereafter. The kidnappers were evidently believed to have been prowling secret killers, who could, therefore, be taken to have caused their disappearance. Shri Brindaban Goswami, then M.L.A. from Tezpur Constituency, reportedly made a statement about the killing of the two youths. Lastly, the State Government has included this case among the other cases of secret killing. From 28.9.1999 till date, more than six years have elapsed. Considering all the above circumstances, a presumption of the facts of deaths of the two youths, namely, Rajesh Mishra and Rajib Koch may not be reasonably drawn; and so it is found..

Under this term of reference the Commission has decided to discuss the “related or relevant” matter of adequate ex-gratia or compensatory payment to the families of the victims Rajesh Mishra and Rajib Koch commensurate with the loss and deprivation suffered and obstacles encountered by the two families in their development in the lines, and to the extent, hitherto planned by the parents of the two kidnapped boys. The parents deposed that they did not pray for any compensation from the State Govt. nor were they given any compensation by the Govt. of its own. One difficulty in deciding this question is that nothing has been heard about the boys since their disappearance. There was an appeal by witness Shri Bapdhan Koch to this Commission to decide whether the two boys are alive or not. But this Commission has no jurisdiction to give any declaration, it being not a court. However, the Government of Assam has included this case in the list of killing cases. We are all proud of our welfare State. In case of any mishap or calamity befalling any one or more of our citizens or families, the welfare State considers it to be its duty to render rescue and relief to the affected persons, more so, when the sufferers have reasons to feel that the State itself was the immediate, or even remote, cause of the misery. The rendering of rescue, relief and recompense is irrespective of any fault on the part of the State. It is really praiseworthy of the Chief Ministers of the States in India to have instantly announced such reliefs and rehabilitation package, and offer in appropriate cases employments to the surviving eligible members of the families. More so when a bread earning member is lost to the family. Even the Legislature has now provided for payment of suitable “no-fault liability” compensation irrespective of the claim for fault liability. In the instant case the bread-earning members of the families have disappeared

under the circumstances discussed in the case. The public prosecution may result in punishment of the culprits, but that itself will bring no financial and livelihood replenishment of the loss suffered by the families. The Commission, as submitted by the learned senior counsel for the Commission and the learned Senior Government Advocate, and for the ends of distributive justice, doth hereby direct the State Government of Assam to pay to the benefit of the victim Rajes Mishra and Rajib Koch, each, a sum of Rs.5,00,000/- (Rupees five lakhs) only, that is, to Shri Bhola Koch, father of Rajib Koch for benefit of Rajib Koch; and to Smti Sadshi Prabha Devi, mother of Rajesh Mishra, for the benefit of Rajesh Mishra, each of the unfortunate victims, forthwith. More than six years have already elapsed, and it brooks no farther delay. Directed accordingly.

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(5)

DIPAK CHOUDHURY KILLING CASE

(Belsor P.S/ Case No. 132/2000)

(A) Circumstances leading to the killing of Shri Dipak Choudhury

On 8.12.2000 at about 1.30. A.M. 6/7 unknown civil dressed, black masked, armed persons came to Helosa village and surrounded Dinabandhu Choudhury's house and knocked at its door saying in Assamese *khura moi Abinash duar khulak, khura moi Abinash duar khulak*, and when the door was not opened, 2/3 armed persons forcibly breaking the door open, entered the house and dragged Dinabandhu's son Dipak Choudhury out of the house to the varendah and front yard, and with him came out Dinabandhu Choudhury, his wife Bhadrawati Choudhury, and Dipak's wife Usha Choudhury holding her daughter Rim jim (then 18 months old) with her left hand and holding her husband tight with her right hand, and in their presence the killers shot Dipak dead, his body tumbling partly on the varendah and partly on the front yard. Mrs Usha Choudhury was also injured in her palm. On 8.12.2000 at 7.25 A.M. Shri Paresh Choudhury lodged a written ejahar at Solmora outpost to the above effect. On receipt of the ejahar, I/C. Mahendra Kalita made G.D. entry No.95 dated 8.12.2000 and forwarded the same to O.C. Belsor P.S. Shri Bipin Behari Singh who registered the Belsor P.S. case No. 132/2000 and entrusted the investigation to Mahendra Kalita who took up investigation. He opened the Case diary and visited the place of occurrence about 3 to 4 K.M.s from the outpost and found the deadbody partly on the varendah and partly on the front yard and sent the dead body for post mortem examination to the Civil Hospital, Nalbari. where inquest was held by the Executive Magistrate, Nalbari. The I.O. recovered from the P.O. 5 No.s of empty cases "probably " of A.K. 47 rifles. The I.O. examined the first informant Paresh Choudhury, and Shri Dinabandhu Choudhury, father of Dipak Choudhury. Informant Paresh Choudhury said that at about 1.30. A.M. about 20 armed miscreants came by one Maruti car and 2 Tata Sumos and forcibly broke open Dipak's living room door and tried to drag Dipak out of the house. Then they brought unwilling Dipak's

father Dinabandhu Choudhury and his mother Bhadrawati Choudhury out of the house to the central yard, but when they wanted them to come out to the front yard, they refused to come and at that stage Dipak was shot dead.

The I.O. said that he examined Dinabandhu Choudhury who told that someone called *khura khura moi Bordoloi. khura khura moi Bordoloi*. Two of them entered Dipak's bed room and took away some cash and ornaments. The FIR was lodged by Parameswar Choudhury at Solmora outpost that night itself at about 3.39 A.M., but the police came next morning at about 8 A.M on 8.12.2000 Then the D.C and S.P. and the army came and inspected the damaged articles of their house and consoled them. The dead body was sent for post-mortem examination and Mrs Usha Choudhury's palm was treated. While I.O. was at the place of occurrence the Addl. S.P. Nalbari Shri Bidyut Buragohain arrived and instructed I.O to bring back the dead body from hospital, hand it over to the relatives and to stay there till the funeral was over, and he did accordingly. The I.O. examined the inmates of the house including Dinabandhu Choudhury who stated that while retreating the killers took away about 29 tolas of gold ornaments and cash of Rs.11,500 Investigation also revealed that the killers came by two Maruti vans and one Tata Sumo which were parked near the village temple about a furlong away from the house; and they retreated in the same vehicles. The investigation of the case was supervised by the Dy S.P., Nalbari on 10.12.2000 and directed the I.O. to attend immediately to :-

1. As the name of Abinash Bordoloi (SULFA) has been reported in some newspapers, he should be interrogated and his statement recorded;
2. Interrogation of witnesses to be carried out based on Abinash Bordoloi's statement to pinpoint his location on the night of the incident;
3. Some more public of the area is to be examined to ascertain identity of the culprits;
4. To engage source to identify the culprits.

However, the case diary records that accordingly the I.O. examined Abinash Bordoloi and other witnesses, but found no clue about the identity of the killers or particulars of the vehicles used.

The investigation was supervised by D.I.G.(CWR) on 30.10.2001 when he directed following steps:

1. Examine Diganta Choudhury; 2. Examine some witnesses on Nalbari-Palla road who can identify the vehicles; and 3. Examine some more SULFA activists of Guwahati, Nalbari, and Kamrup in connection with the incident.

The case diary records that Abinash Bordoloi was examined. His statement was that on the night of 7.12.2000 he had to be at the Dr. Tapan Deka Maternity hospital at Nalbari for the whole night and could not go anywhere, but the I.O. even did not verify its truth from the hospital. The alibi has not been proved. Besides, the distance between the said Dr. Tapan Deka Maternity hospital and Dinabandhu Choudhury's house being about 15 miles only, it would be possible to come, commit the killing, and go back within short time. The I.O. was asked whether he verified the alibi from the hospital and his reply was that he did not verify. The result is that the alibi was not proved. Even if it is taken as proved, the distance between the p.o. and the aforesaid maternity hospital was not far off (said to be about 15 miles) and the distance could be travelled quickly for committing the crime and return. Abinash Bordoloi was known to have owned a Maruti car. In *Dudha Nath Pandey* (1981) 2 SCC 166 the Supreme Court held that the plea of alibi postulates physical impossibility of presence of the accused at the scene of offence by reason of his presence at another place.. The plea

can, therefore succeed only if it is shown that the accused was so far away at the relevant time that he could not be present at the place where the crime was committed. Applying this to the instant case, the two places being near, and Abinash Bordoloi having owned a Maruti car the alibi has to be rejected. The conclusion has to be that the police deliberately absolved the person whose name was very much on the record, and investigation showed that there was no other Bordoloi known to Police in that area.

The SULFAs were examined, but none could say about the accused persons or the vehicles. Interestingly, the C.D. says at p.21 : "As per statement of Sulfa Activist Abinash Bordoloi (since killed,) and Bikash Dutta, the brother of Sacha Choudhury was killed by ULFA as there was some internal dispute going on at that time amongst the leaders of ULFA" However, who was that ULFA man and why an ULFA will kill the brother of the ULFA Foreign Secretary has not been indicated. The merit of this statement will be discussed with other evidence in the case. The Seizure list (C.D. Page.25) shows that 5 Nos of empty cartridge cases were recovered from the p.o. by the I.O. on 8.12.2000, caliber was not stated. The reason is obviously to avoid forensic/ballistic examination thereof.

Shri Dinabandhu Chowdhury in his affidavit dated 7.11.2005 stated, *inter alia*, that on 7.12.2000 in his house, he himself, his wife Bhadrawati Choudhury, his son Dipak Choudhury, daughter-in-law Smti Usha Choudhury, grand daughter Rimjim Choudhury (aged 18 months) and his two other sons Shri Prasenjit Choudhury and Diganta Choudhury were sleeping in different rooms of his house. At about 12 midnight some people knocked at their doors and windows, and being awakened, they opened the door and came out and saw 6/7 armed persons in civil dress and three of the armed persons entered the house and dragged Dipak Choudhury out of the house; With him his wife Usha Choudhury also came out holding her daughter by right hand and her husband by the left hand. Seeing the condition Dipak caressed his wife on her head and kissed his daughter, before he was shot at his neck and chest. on the veranda. Mrs. Usha Choudhury was injured, a bullet piercing her left palm. In all seven rounds were fired. Two of the persons entering the house ransacked Dipak's room and allegedly took away money and 22 tolas of gold. Dinabandhu stated that his two other sons, Prasen and Diganta went up the ceiling of the house to save their lives. Police did not take the allegation of assailants taking away gold and cash, because, as the I.O. said, Dinabandhu could not give any particulars of cash and gold when he was examined u/s. 161 Cr.P.C. This makes one ponder whether the killers were also trying to find some money as well.

(B) Identity of the killer(s) and accomplice(s), if any.

There is a developed principle of law that accomplices are the parties to the crime. On the basis of degrees of complicity to the crime, accomplices are divided into perpetrators and accessories. An accessory is one who excites or helps the commission of a crime by the perpetrator. Perpetrator is exclusively the person who in law performs the crime. More precisely, the perpetrator is the person who, being directly struck at by the criminal prohibition, offends against it with the necessary *mens rea* or *negligence*.

By notification the identity of the killers is yet to be established. We discussed the meaning of "secret". In Part I. This killing is secret as to the killers. Identification of the killers has to proceed on the basis of investigation and evidence. Wherefrom two points clearly appear, namely, that routine investigation proceeded. Police dogs were not engaged, to sniff out the culprits. Foot or finger prints were not taken and no clue was found despite the informations supplied by the inmates. Mr. Ranjan Bhuyan, the then Dy S. P. also supervised investigation.

The case diary records that the above people were examined, but none could say anything about the killers or the vehicles. Interestingly, the C.D. says at p.21 : "As per statement of SULFA Activist Abinash Bordoloi (since killed), and Bikash Dutta, the brother of Sacha Choudhury was killed by ULFA as there was some internal dispute going on at that time amongst the leaders of ULFA" However, who was that ULFA man and why an ULFA will kill the brother of the ULFA Foreign Secretary's brother has not been indicated.

Such a suggestion could not obviously be taken from persons who were themselves suspected to be the killers. The source of the statement was not stated. The point to be noted is that since the date of the incident, the clue has been that Abinash was the person who called Dinabandhu *Khura moi Abbinas he duar khulak* (I am Abinash only please open the door) and based on that there was instruction to examine Abinash who was then sheltered inside Nalbari Police Reserve lines. When examined, Abinash first made an self exculpatory statement that in the night of 7.12.3000 for the whole night he was busy at the Tapan Deka's Maternity hospital and so could not go out. The I.O. did not verify that statement. Then he examined Bikas Dutta another SULFA activist sheltered inside Nalbari Reserve. He said that he suffered from diarrhoea for four days, from 5th to 8th of December; he also said that Abinash was also busy that night nursing his mother in Tapan Deka's Maternity hospital in Nalbari. Mintu Dutta and Pratap Rajbangshi were other SULFAs. Having thus exculpated themselves, they concocted the story that Sacha Choudhury's brother was killed by some other ULFA as internal rivalry within the ULFAs was prevalent. It is consistent with the theory of patent unholy Polish-SULFA nexus, that the police swallowed this and gave up the original clue, and consequently did nothing more by way of investigation and the case remained clueless and still pending, pronouncing travesty of criminal justice in the State. From all these one could not avoid the impression that sheltering the SULFAs and utilizing them for information and guidance could have stood on the way of the police in impartial discharge of their duties as police officers. This observation, it is hoped, will not be interpreted as tantamounting to finding fault with the officers in performance of their duties on this ground.

The Seizure list (C.D.P.25).shows tha 5 Nos of empty cartridge cases were recovered from the p.o. by the I.O. on 8.12.2000, caliber was not stated.there.The supervisory note of the DIG(CWR) dated 30.5.2001 instructed to examine SULFAs of Nalbari, Kamrup and Guwahati City

Dinabandhu choudhury said that they had no enmity with any person; and that his son Dipak was not with us. The FIR was lodged by Parameswar Choudhury at Solmora outpost that night itself at about 3.39 A.M., but the police came next morning at about 8 A.M. on 8.23.2000 Then the D.C and S.P. and the army came and inspected the damaged articles of their house and consoled them. The dead body was sent for post-mortem examination and Mrs Usha Choudhurt's palm was treated.Shri Dinabandhu Choudhury said that his son was killed only because his another son Sacha Choudhury was Foreign Secretary of ULFA.' and that he did not suspect any one of the neighbourhood.He needed secutity and protection for the surviving members of the family, particularly, means of livelihood for his grand daughter and daughter-in-kaw.

In his deposition Dinabandhu clearly said that the army visited his house almost every day and the police visited less frequently. The army used to ask whereabouts of his son Sachadhar Chaudhury, and they stated that he was in Sweden, and might respond to any advertisement which he made as advised. Only army officers used to come and talk with him. Sometimes people in civil dress also used to come, but they would not come or talk to him. The Solmara army camp was two and half k.m.s from his house. After three days of Dipak's killing the

police came to him and offered security which he declined. After about two months of Dipak's killing, the army camp disappeared, as if its purpose was served. He said that the officers were changing and he did not know their names and addresses.

There were 4 SULFAs in the locality, two of them already dead and the surviving two were staying elsewhere with police or army, as he heard. He knew Abinash Bordoloi who used to come to his house before ULFA was banned; and knew that he was killed after Dipak's killing. Bikas Dutta, a SULFA, of Dahudi village used to come to his house before Dipak's death but not thereafter. Mantu Dutta, then an ULFA came to his house four days after the killing. He was invited by army to some meetings (twice in 1996 to 2001, once in Nowgong and another in Bilweswar Dewalay of Kamrup; and they used to send greetings. According to him the army was not involved in killing of Dipak. otherwise they would not have come to his house on 8.12.2000 and shed tears with family mourners. At the same time he disclosed that when the army officers came to his house on 8.12.2000 some of the people who gathered there asked the officers that on other days the army used to check even those who came by bike but why they did not check the three Sumos that came to kill Dipak, they replied that they could not do so on direction from higher authorities. Coming as it is, from the army personnel, this must be taken as true. Of course, in the absence of names and addresses, the particular army persons could not be heard. To the next question whether he thought that the army was involved, Dinabandhu replied in the negative. The Commission did not disbelieve Dinabandhu Choudhury when he said that the army was not involved in the killing. To a question whether he thought about the reason of nobody coming from the Govt side including the Chief Minister and MLA to express condolence on the death of his son, he replied that they knew about the killings and the reasons thereof. Asked whether he thereby meant it was the result of the conspiracy of the Govt., he replied "what else there could be". This shows that Dinabandhu Choudhury was certain about Govt. complicity in the killing.

Questioned as to his impression about the *modus operandii* of the case Deepak Kumar, S.P. Nalbari said that the *modus operandii* in all cases in Nalbari were the same. There were two, namely, to ambush; and to come at night, drag the person out of their homes and quietly shoot them dead without making any noise.

The S.P.(HQ), Nalbari in his affidavit dated 10.7.2006 stated that early morning on the date of the incident he only had the information through Police control Room, Nalbari "that some unknown misceants killed Dipak Choudhury at his residence at Helosa under Belsor PS" and that after receipt of the information the S.P. Nalbari had already rushed to the p.o. and he stayed back at H.Q. Sri Dipak Kumar, the then S.P., Nalbari in his affidavit dated 6.7.06 stated "that on receiving the information I rushed to the spot with my police personnel and directed the concerning police officers to take necessary steps about the incident." Sri Bidyut Buragohain, the then Addl. Suptdt of Police, Nalbari, from 1.6.99 to 26.2.2001, in his affidavit dated 7.7.2006 said that on 8.12.2000 he received a phone call from the Police control Room informing him of the incident he rang up Sri Dipak Kumar, S.P. Nalbari who instructed him to proceed to the p.o. and accordingly he proceeded to the p.o. along with the staff and reached at around 8 A.M. and there he found I/C Solmora police outpost and Circle Inspector Golok Das.. He took the details of the incident from them and talked to Dinabandhu Choudhury Mean while Sri B. Kalyan Chakraborty, I.A.S., D.C. Nalbari arrived there. After the S.P. left he remained in control with the Circle Inspector and staff there till the funeral was over. He left Nalbari on transfer.

Sri Mahendra Nath Kalita I.O. of Solmora outpost deposed that he examined Sri Abinash Bordoloi at Nalbari Polish Reserve; and Abinash said that on 7.12.2000 which night he was

busy with his mother's treatment in Tapan Deka maternity hospital at Nalbari and he, therefore, could not be said to have been involved in the killing case of Dipak Choudhury. The I.O asked him about his saying "*Khura, Khura*, I am none else than Abinash" to the inmates of D'nabandhu's house, and his reply was that by saying so why he should have implicated himself.. However, that he was out of the Nalbari Police reserve was clear. Kalita, for reasons best known to him, did not enquire whether in fact there was such an entry in the medical register of the Tapan Deka Maternity hospital showing him there. He did not arrest Abinash Bordoloi, as, according to him, there was not enough evidence for his arrest. Shri Kalita also examined Sri Bikash Dutta who said the he suffered from diarrhea and that Abinash Bordoloi was also not involved; and that there was disputes amongst the ULFAs and some ULFA must have killed Dipak Chowdhury. However, who could be that ULFA was not stated. It is curious that police appeared to have been influenced by a suspect in that very crime. Sri Nirmal Kr. Barua came to Belsor in on 26.12.2003 to 7.11.2004 i.e., beyond our term of enquiry, but we were interested in the final position of the case and so he was questioned on investigation, This portion is irrelevant, only the final position namely, that charge sheet was not submitted and that the case is still pending, is the important points for us. Shri Manoranjan Kakoti's deposition as O.C. Belsor also proved reluctance to accuse SULFAs and arrest them despite the inmates suspecting and clearly giving clues. These were the common characteristics in investigation of these cases as was also the scanty records in C.D. in all respects. Questioned on the two cases, namely, that of killing of Dimba Rajkonwar and that of Dr. Dharanidhar Das and family, Shri G.M. Sroavastava said (A., 88) Normally police compares the cases on the basis of *modus operandii* and circumstances.

Q.47. If in a concrete instance a member of the family was requested to bring their member of the family in the ULFA or similar organization to the main stream and they fail to bring them back they were also arrested and detained under TADA and allegedly tortured, and sometime thereafter it so happened that the very member of the family has been killed in a way that it is not possible to know who were the killers, what would be your normal conclusion in such a matter?

A. Naturally a suspicion will arise..

The suspicion of the inmates of the family that the State agencies and their collaborators were executing the killing could not, therefore, be said to be unreasonable.

(C) Whether there was any conspiracy in targeting the victim and the mofve behind such killing.

(I) **Conspiracy** in targeting the victim.. Conspiracy. in the context of the instant inquir, will mean criminal conspiracy as defined in Section 126A of IPC as follows:.

"when two or more persons agree to do or cause to be done .-

“(1) An illegal Act, or

(2) An act which is not illegal by illegal means , such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.- It is immaterial whether the material Act is the ultimate object of such agreement or is merely incidental to that object..

Abetment of a thing. As defined in Section 107 of the Indian Penal Code (IPC)

“ A person abets the doing of a thing . who-

First- instigates any person to do that thing; or

Secondly- engages with one or more other person or person or persons in any conspiracy for the doing of that thing. if an act or illegal omission takes place in pursuance of that conspiracy , and in order to the doing of that thing ; or

Thirdly, institutionally aids , by any act or illegal omission, the doing of that thing.

Explanation -1. A person who, by wilful misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures . or attempts to cause or procure, a thing thing to be done, is said to instigate the doing of that thing.; or (Illustration omitted).....

Explanation -2 Whoever either prior to or at the the time of commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act”.

The law and jurisprudence of conspiracy has been discussed in para 10 of General part of this report; the same is referred to...The question whether there was any conspiracy or not in the killing of Shri Dipak Choudhury has to be decided on the basis of the law, and facts in evidence on record. In case the answer is in the affirmative, then also the question will be as to who were the conspirators?.

It is in evidence that Shri Dinabandhu Choudhury. Bhadrawati Choudhury and other members of the family were requested by various Government agencies to persuade their son Sacha Choudhury who has been the Foreign Secretary of ULFA, and they were forewarned by them that in case of failure to persuade him (Sacha Choudhury) to surrender and join the peace talks and to bring peace, the consequences would not be good for the family, and the fact that Sacha Choudhury could not be so persuaded because of their having no contact with him, resulted in killing of Dipak Choudhury obviously by those who forewarned them of no good consequences to the family on the fateful evening, there can be no other answer than that there was criminal conspiracy in the course of action culminating in the killing. by act of shooting. But there was a course of conduct involving the deciders of the course of action culminating in the killing. Considering the facts of this case in light of definition of conspiracy it can surely be held that there was a long drawn course of action amounting to conspiracy in the killing. The conspirators are the perpetrators and the other accomplices.

(II) Motive. While the earlier witnesses appeared to have deposed that it was at the instance of the State Government the killing was done with a view to induce ULFA to abandon its insurgent activities, Sacha Choudhury's father Dinabandhu Choudhury deposed that the clue lay in the unholy police- SULFA nexus, constituting the latter into an extra-constitutional authority by sheltering them, allowing them to move freely with the army, CRPF and the police, and with the active co-operation of Nalbari police and that coming by vehicles SULFAs did the killing.

Any judicious finding on the motive behind the killings has to be based on reasonable analysis of all those events to understand the entire course of action culminating in the killings. Coincident or immediately following events may not always be for causal connection, As a logical example it is said that the fact that the child died immediately after the moon was seen in the sky hardly proves that the cause of the child's death is the emerging of the moon in the sky. Also sometimes it so happens that both the events are causally connected with a common antecedent event.

(D) Pinpointing responsibility on persons involved directly or indirectly in commission of the killing.

This is the most difficult task of the Commission. In the absence of effective direct evidence, we have to depend on relevant circumstantial evidence. That too is not forthcoming in such measures as could help us in pinpointing responsibility on the persons involved. Fortunately the term of reference mentions "involved directly or indirectly in commission of killing" This enables us to act on basis of integrated evidence rather than on isolated ones. We have, therefore, to integrate such parts of evidence as will lead to a conclusion beyond reasonable doubt, for pinpointing responsibility. Besides what are found in relevant pieces of evidence, the common characteristics found in each individual case also may throw some light. We are also to follow the principles of law of evidence as enunciated by authorities on the subject.

Best on "The Principles of The Law of Evidence. Ninth Ed. in its Introduction (pp.4-5) said:

6. "With regard to intensity of persuasion, the faculties of the human mind are comprehended in the genera, knowledge and judgment. 1. By "knowledge" strictly speaking, is meant an actual perception of the agreement or disagreement of any of our ideas; and it is only to such a perception that the term "certainty" is properly applicable. Knowledge is intuitive when this agreement or disagreement is perceived immediately, by comparison of the ideas themselves; demonstrative when it is perceived mediately, i.e., when it is deduced from a comparison each with intervening ideas which has a constant and immutable connection with them, as in the case of mathematical truths of which the mind has taken in the proofs, and lastly through the agency of our senses, we obtain a perception of the existence of external objects, our knowledge is said to be sensitive. But knowledge and certainty are constantly used in a secondary sense, which it is important not to overlook; viz, as synonymous with settled belief or reasonable conviction; as when we say that such a one received stolen goods knowing them to have been stolen or that we are certain or morally certain, of the existence of such a fact etc."
7. 2. "Judgment", "the other faculty of the mind though inferior to knowledge in respect of intensity of persuasion, plays quite as important a part in human speculation and action, and, as connected with jurisprudence, demands our attention even more. It is the faculty by which our minds take ideas to agree or disagree, facts or propositions to be true or false, by the aid of intervening ideas whose connection with them is either not constant and immutable, or is not perceived to be so.. The foundation of this is the probability or likelihood of that agreement or disagreement, of the truth or falsehood, deduced or presumed from its conformity or repugnancy to our knowledge, observation, and experience. Judgement is often based on the testimony vouching their observation or experience but this is clearly a branch of the former, as our belief in such cases rests on a presumption of the accuracy and veracity of the narrators."

The best evidence rule."Phipson on Evidence," 9th ed. P. 51 under caption: "The Best Evidence Rule. Strict Proof" Says: "The maxim that "the best evidence must be given of which the nature of the case permits." has often been regarded as expressing the great fundamental principle upon which the law of evidence depends. Although, however, it played a conspicuous part in the early history of the subject, the maxim at the present day affords but little practical guidance. The applicability of the rule depends on the nature of the subject to be proved. In the complicated nature of things today the emphasis has somewhat changed. (P. 53) According to Phipson, "In the present day, then, it is not true that the best evidence must,

or even may, always be given, though its non-production may be matter for comment or affect the weight of that which is produced. All admissible evidence is in general equally receivable. Thus, circumstantial evidence is no longer excluded by direct, and even in criminal cases the *corpus delicti* may generally be established by

either species, or, indeed, by the defendant's mere admissions out of Court".

The following common characteristics of the first group of seven cases are found in this case . while answering its terms of reference, so as to justify a finding of a general plan of "Ulfoside" i.e., deliberate killing of ULFAs and their relatives on their basis. namely:

1. That this killing involved an ULFA family, being that of the ULFA Foreign Secretary Shri Sacha Choudhury, and its investigation is kept pending, but no clue. .
2. As in other cases, this killing of Sacha Choudhury, was committed at dead of night, to allow the assailants to escape under darkness.
- 3.. The assailants covered their faces with black wrappers and caps, to avoid being identified.
- 4.t The weapon used in killing was a firearms of prohibited bore being generally found in police-military situations
5. The firearms being of prohibited bores, forensic examination of the material exhibits was avoided. and investigation fizzled out..
6. The vehicles used were reportedly Tata Sumos which were never seized or taken into custody. .
7. There were army patrolling in the crime area prior and posterior to, but not during the killing.
8. That the army was ubiquitous. There was lurking evidence of unholy Police-SULFA nexus in the killing, some of the latter being constituted into an extra-constitutional authority and used as the executioners.the *modus operandi* being to visit the family, ask members to persuade its ULFA member to surrender, failing which, to come afterwards and shoot him/them dead,
9. There was general resentment and decry against the Unified Command Structure/ Chief Minister..
10. There was connivance of SULFA; and omission to make any SULFA an accused despite sure clues.
11. The investigation did not commensurate with the seriousness of the crime perpetrated..
12. That modern scientific methods of investigation, finger/foot prints, dog-squads were never used.
13. No condolence message was sent from the Govt. of Assam to the victim family.
14. No ex-gratia/compensatory payment was made or offered by the Govt. of Assam.in this case.
- 15 In this case death penalty has been imposed for "status offences," on Dipak Choudhury for being a member of ULFA family of the ULFA Foreign Secretary.
16. From this case "remote orchestration" and principle of "kill and get killed" are deducible. This decision is based on the commonness of all the characteristics of this group of seven cases and weakness ess shown by the police towards concerned SULFAs and ineffective investigation in all the cases. No clues, none charge sheeted and made accused. There has been a tendency to implicate ULFAs without basis or proof. The remote orchestration is from high level, the remote being supposed then to be at Home.

The principle of kill and get killed is applicable to this case as the one who was suspected, got killed later. But the suspicion persists on those who were with him in killing Dipak Choudhury.

Dipak Choudhury was not ULFA. He could not be blamed for failing to persuade his brother Sachadhar Choudhury to return to peace talks as he had no contact with Sacha Choudhury. He had neither the guilty mind nor did he do any guilty act. Yet he was imposed the "Status offence".

Status Offence. Glanville Williams in his Textbook of Criminal Law discussing offences without conduct writes (p.36). "One might suppose, then, that the requirement of some relevant conduct, whether by act or culpable omission, would be regarded as the foundation of every criminal charge; and that knowledge of this rule will be part of the elementary learning of the lawyer- *a pans asinorum* in every examination for the bar or for the solicitor's profession. As will have been gathered, the assumption would be wrong, partly because of some of the wording of the legislation and partly because of the failure of the courts to develop a liberal principle of interpretation, an offence can be committed without any act or culpable omission at all. The offences of this type have been aptly called status offences; they are committed by people who simply find themselves with a particular label. (It is perhaps not without significance that status offences commended themselves particularly to tyrannical regimes; the criminal code of Stalin's Russia abounded with them, as for example, the offence of being a relative of an enemy of the people.)

Dipak Choudhury was killed for his being member of this family of, as if, the "enemy of the people," Shri Sacha Choudhury, as decided by the then authority in power; and executed by its agents and collaborators. Who else could execute it? The authority is all pervading so much so, that even the Criminal Procedure Code, and for that matter, the Indian Penal Code has been rendered otiose.

Regarding the SULFAs suspected, it may be appropriate to observe that because of the position in which the SULFAs found themselves, between the devil and the deep sea.. their erstwhile colleagues having been deserted by their act of surrender, they deserved adequate protection, But using their services as "guides, "spotters". Trouble-shooters and collaborators in police functions could never be viewed as proper treatment meted out to the SULFAs, far less their being used as the striking arm or the men in charge of the trigger. Let them now be bereft of the hallowed positions, and give them fair field and no favour, at least following the insolvency principle of allowing the declared insolvent to have a fresh start in life. How the erstwhile affected people will adore or avoid them will be a different matter altogether..

So far as the Government wings, agencies, and authorities, both official and political, the principle of "responsible superior" will surely apply; and for all the lapses and misdeeds at the lower levels, higher levels authorities shall be held liable and be subjected to proper punishments. So far as political and minister level authorities are concerned, the principle of collective responsibility will hunt out all those who were forming Government in the State at the relevant period. This principle of collective responsibility will hunt them out wherever they happen to be, during the period following the violation of Constitutional and legal rights of the affected citizens whose fundamental and other legal and human rights were

violated during their faulty governance. But even here the insolvency principle should be followed and the political insolvents also be given fair field and no favours in the ensuing political process of the State. Let there be no witch hunting of any sort. How the same affected people will accept or reject them will, of course, be an entirely different matter..

The Police department is the first resort of the people for protection of their life, liberty, property etc. Spreading disaffection towards police is an offence. Everyone has the duty to help police in restoring law and order in society. There is no doubt that our Police force is one of the best in the country. To make our police still more and more efficient and instructed, some officers, by turn, may be sent for advanced training in detection and decision in modern crimes and criminal practices. Such trained police personnel may be put in the police training College. They should undergo a training course in human right and cyber and other present day crimes and crime prevention.

(E) Recommendations to prevent recurrence of such killings.

With its limited knowledge, experience and wisdom, to prevent recurrence of such killings, the Commission would like to make twofold recommendations, namely, (1) the immediate, and (2) the long term.

- (1) The immediate measure is, first to try to keep in abeyance, and then gradually dismantle the existing Unified Command structure. which is by an order of His Excellency the Governor of Assam, and is neither a statute nor a statutory order, but an arrangement agreed to by the Centre and the State Govt. regarding deployment and operation of the armed forces and other forces of the Union deployed by the Central Govt, "in aid of civil power" of the State of Assam, on request/ requisition by the State Govt. The Structure itself envisages its review after every three months, and there is no limit to the review and may even envisage its dismantling. The parties concerned may agree to dismantle it in the same way they agreed to create it. The constitutional position as to deployment of the armed forces and other forces of the Union in a State has already been discussed in paraa 14 & 15 of "Part I. INTRODUCTORY," of this report and are referred to in this context. The deployment of the armed forces and other forces of the Union in the State of Assam has been "in aid of the civil power of the State." In case of the civil power of the State being sufficient enough to cope with its civil problems, *ex hypothesi*, there is no need of armed forces or other forces of the Union for the State.. The armed forces and other forces of the Union were deployed to cope with the internal disturbance thought to have been caused by the activities of the banned outfits disturbing the area leading to its declaration as a disturbed area under the Disturbed Areas Act./ The Armed Forces (Assam and Manipur) Special Powers Act, 1958, as amended in 1957. However, the disturbance has to a great extent been under control. The life in the State has become normal. The last Assembly election could be held without any disturbance, thanks to the co-operation of the local banned outfits. This may be an appropriate time for effective talks with the local outfits to observe cease fire. first for a short period, say six months, and for gradually longer and longer periods, and for restoration of normalcy and confinement of the armed forces and other forces of the Union to the barracks, and on continuation and assurance of normalcy, ultimately withdraw, on an assurance of peace on the part of the banned outfits and ultimately lifting of their bans themselves. To achieve this, strenuous, but cordial, talks between the outfits, the State Government and the Central Govt would be

necessary; and there is no reason why such talks should not succeed. Restoration of normalcy. Disturbance and insurgent activities invited the Unified Command Structure. It is in the hands of the people to assure that peace will be maintained and insurgent activities will be curbed and normalcy will be restored. If the public are serious in this restoration of normalcy, there can be no earthly reason why such a situation cannot be brought about by mutual co-operation of the State and its people. Modalities may be worked out in consultation and cooperation among the Government, the political parties, student organizations, the outfits and the general public. Restoration of normalcy will also effect economy. Meanwhile, in the interest of peace and tranquility, there should be no witch hunting. Constitutionally speaking, restoration of normalcy is the terminus of internal disturbances and army deployment in the State.

- (2) The long term measures are meticulous observation of the provisions of the Constitution and the laws in carrying out each and every function of the Government. All the departments of the Government must function faithfully in accordance with the mandatory provisions of the Constitution of India. In other words, the **long term measures** may include, in the long run, the faithful obedience to, and implementation of, the Constitution and the laws of the country. The Centre-State relationship must also be in accordance with the mandates of the Constitution. Guidance of the famous Sarkaria Commission's report will be helpful in this regard. Manusmriti said (Buller) VIII, 351. "By killing an assassin the slayer incurs no guilt, (whether) he does it in public or secretly; in that case, fury recoils upon fury." 386. "That king in whose town lives no thief, no adulterer no defamer, no man guilty of violence and no committer of assaults attains the world of Sakra (Indra)"; 420. "A king who thus brings to a conclusion all the legal business enumerated above, and removes all sin, reaches the highest state (of bliss)" Sukracharya's Dandaniti is based on danda, meaning, punishment. Ancient sages said that without *danda matsyanyaya will prevail* and the strong will devour the weak, even the sacred *prasada* of the *yajna* will be swooped at by crows. *Danda* keeps awake when the country is asleep. All people have innate goodness in them, but some do not. In the absence of punishment those will demoralize others in the society. The norms and laws of today are not materially different. Secret killing amounts to denial of all the constitutional, legal and human rights to the killed, and violation of all these rights by the killer. If killing is by public authorities, it also means trampling over the oaths taken by them on assumption of public offices. The society need be protected from the people with such dangerous propensities. It is trite learning that every action has a reaction, fury begets fury and that brutalities generate more brutalities. Continuous disturbance of the even keel of the society and some excesses committed by some elements had to be checked by equally harsh measures, but that would not justify the lawfully established Government in abdicating its powers, duties and responsibilities to extra-Constitutional organs jeopardizing the legal, fundamental and human rights of the citizens of sovereign, socialist and democratic Republic of India. Those who are entrusted by the people to govern them, ought to be well versed with the provisions of the Constitution of India and the relevant laws, rules, and administrative instructions, and orders framed thereunder. They should be aware of the constitutional limitations as also the rights of the citizens of the State against their State itself. Fundamental rights of citizens, including rights to life, liberty, freedoms, non-discrimination etc. must not be violated. They must never have propensity to kill the citizens they govern, secretly or openly. They must not harbour any kind of hatred or dislike on numerical, religious, communal, racial, ethnic, social, historical. or of any sort whatever. At the minimum they should be true to their oaths and be absolutely free

from corruption in any form and manner..While no training course will be appropriate, considering their exalted position and prestige, periodical seminars and discussions at Government levels may refresh their knowledge.and experience.

(F) Any other matter related or relevant to the inquiry.

Under this term of reference the Commission has decided to discuss the "related or relevant" matter of adequate ex-gratia or compensatory payment to the family of the victim Dipak Choudhury, commensurate with the loss and deprivation suffered and obstacles encountered by it in its development in the line. and to the extent, hitherto planned by the deceased. .Shri Dinabandhu Choudhury, father of Depak Choudhury, deposed that he did not pray for any compensation from the State Govt. nor was he given any compensation by the Govt. of its own. We are all proud of our welfare State. In case of any mishap or calamity befalling any one or more of our citizens or families, the welfare State considers it to be its duty to render rescue and relief to the affected persons, more so.when the sufferers have reasons to feel that the State itself was the immediate, or even remote, cause of the misery. The rendering of rescue, relief and recompense is irrespective of any fault on the part of the State. It is really praiseworthy of the Chief Ministers of the States in India to have instantly announced such reliefs and rehabilitation packages,and offer in appropriate cases employments to the surviving eligible members of the families, inasmuch as sometimes the very bread earning patriarch is lost to the family. Even the Legislature has now provided for payment of suitable "no-fault liability" compensation irrespective of the claim for fault liability. In the instant case a bread- earning som of the family has been shot dead under the circumstances discussed in the case. The public prosecution may result in punishment of the culprits, but that itself will bring no financial and livelihood replenishment of the loss suffered by the survivors, including the minor children of the bereaved family. The Commission, as submitted by the learned senior counsel for the Commission and the learned Senior Government Advocate, Assam, and for the ends of distributive justice, doth hereby direct the State Government of Assam to pay to the widow of the victim, Smti Usha Choudhury for the benefit of herself and her daughter Rim Jim, a sum of Rs5,00,000 (Rupees fivelakh) only forthwith. The Government of Assam shall also provide an employment in a Grade III .post to Smti Usha Choudhury so that she can maintain and educate her daughter who lost her father in her infancy.More than five years have already elapsed, and it brooks no farther delay. Directed accordingly.

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(6)

JYOTISH SHARMA KILLING CASE

Geeta Nagar P.S. Case No. 1/2001.

Date of occurrence 3.1.2001.

The following witnesses filed affidavits and were edxamined in this case

P.W. 1. Smti Anima Devi

N.W. 1. Shri Nomal Ch, Gogoi

P.W. 2. Dr, Prabin Ch. Choudhury

N.W. 2. Shri Mani Saikja

P.W. 3. Shri Dhiraj Das

N.W. 3. Shri Prasanta Kr. Dutta

P.W. 4. Shri Bhagawan Ch. Haloi

N.W. 4. Sshri G.P. Singh

The affidavit of Aparna Devi was in the same line with that of her mother

(A) Circumstances leading to the killing of Jyotish Sharma.

On 3.1.2001 night Shri Jyotish Sharma, his wife Anima Devi, and his daughter Smti Aparna Devi and others were peacefully in their Nabin Nagar, Guwahati house where at about 11P.M. they and the other inmates heard someone knocking at their door calling 'Sarmada, Sarmada'; and when they came out saw 6/7 armed and masked, (faces covered by black cloths) one of whom first asked Jyotish Sharma number of questions as what was his name, where was his permanent residence, what was his relation with Subhas Sharma, whether he was from Nalbari, and without waiting for replies, the men held Mr. Sharma telling that he was to locate and point out a man's house at Chandmari, and that he would be dropped at Chandmari. When wife Anima and daughter Aparna protested that he could not go at that night time, they threatened her and other inmates saying they would shoot down the whole family if they spoke again; and dragged him to the white Maruti Zypsy parked near their gate about 30 yards away and sped away. In her affidavit Anima Devi said that they shouted for help, but none came out. She also said that the Maruti Zypsy used by them had no number plate. Hearing their wailings neighbour The affidavit of Aparna Devi was in the same line with that of her mother

Shri Bhagawan Ch. Haloi, and Shri Dhiraj Das arrived and being told what happened, Shri Haloi was sent to the Geetanagar Police Station for lodging information, and Shri Das was sent to Chandmari Police station to see and know whether Jyotish Sharma was taken thereto. After a while police from Geetanagar P.S. arrived and reported that wireless messages were sent to all police stations informing the incident. Next day the deadbody of Jyotish Sharma, was found at Katala Barkuchi Village in Nalbari on 4.1.2001 at noon. The villagers heard firing sounds towards the embankment, but did not come out. In the morning villagers found the deadbody which was identified by Shri Dilip Sharma, brother of the victim. The Village Gaonburha Shri Arabinda Kalita lodged an Ejahar at Nalbari P.S. whereupon Nalbari P.S. case No. 6/2001 was registered and investigated, The I.O. Muharram Ali Laskar recovered one .9 mm empty case and two broken bullets were recovered from the deadbody in hospital.

(B) Identity of the killer(s) and accomplice(s), if any.

There is a developed principle of law that accomplices are the parties to the crime. On the basis of degrees of complicity to the crime, accomplices are divided into perpetrators and accessories. An accessory is one who excites or helps the commission of a crime by the perpetrator. Perpetrator is exclusively the person who in law performs the crime. More precisely, the perpetrator is the person who, being directly struck at by the criminal prohibition, offends against it with the necessary *mens rea or negligence*. By notification the identity of the killers is to be established in this Geetanagar P.S. case No. 1/2001. Identification of the killers has to proceed on the basis of investigation and evidence, We discussed the meaning of "secret" in Part 1. This Geetanagar P.S. case No. 1/2001 is secret as to the killers as also to the situs and method of killing. The situs of kidnapping was no doubt the Nabin Nagar house of Jyotish Sharma. The situs of killing would be the place, i.e., the embankment of Katala Borkuchi village where the villagers heard gunfire sounds at night and found the deadbody in the morning. *Crimen trahit personam* Crime carries the person. Therefore the jurisdiction whereunder the situs of the crime falls, will be the jurisdiction for the case.. The Geetanagar P.S. will continue to have jurisdiction in the matter of kidnapping up to its boundary. Nalbari

P.S. case No. 6/2001 has already been registered and investigated, but the two cases have been shown as amalgamated, by order of the Addl. C.J.M. Nalbari, and hence investigated as such. Identity of the killers may be established by investigation and evidentiary proof.

P.W. 1, Smti Anima Devi deposed that they saw 6/7 well armed persons, with faces masked by black cloth, coming to their house, and two of them coming forward, knocking at the door and calling *Sarmada, sarmada*, (elder brother Sarma, elder brother Sarma). When they opened the door, they smelt wine from their mouths, and they asked many questions like whether they knew Subhas Sarma, whether he was from Nalbari, but without waiting for the answers, they dragged Jyotish Sharma to the waiting Maruti Zypsy near their gate and taking him and saying that he was to locate a house at Chandmari where he would be dropped. She could not give any other description of the persons, but two things were clear, namely, they knew Jyotish Sharma, and they spoke in Assamese. Shri Dhiraj Das, p.w. 3. was sent to Chandmari Police station to see whether he was really dropped there. Going there he saw some CRPF personnel and asked them about Jyotish Sharma being dropped there, and whether they went to Jyotish Sharma's house. They replied that Jyotish Sharma was not dropped there, and that they did not go to Jyotish Sharma's house. and that they went on duty to Geetanagar side and lifted a scooter, and also said that Jyutish Sharma's, as they were told, was a different case. Witness came back to Jyotish Sharma's house and narrated it before the police and the inmates there. P.W. 4 Bhagaban Ch. Haloi, a B.Com student and neighbour, said that came to Jyotish Sharma's house hearing noise and wailing from that side, and met Sharma's second daughter on way and learnt about the incident; and he on a bi-cycle went to Geetanagar Police station and lodged information which was taken down by police, who immediately came to the place of occurrence taking him also in their vehicle. He saw Geetanagar police interrogating the inmates of the house.

N.W. 1, Shri Numal Ch. Gogoi, O.C. Chandmari P.S. came to know about the incident by about 12.00 midnight from police wireless and police control room, also from O.C., Geetanagar over phone. Without details. No GD entry was made. as he already received it earlier by PAPA vehicle and VHF. The S.P. did not give him any instruction, but the Addl. S.P. being contacted informed him that through VHF that all the outposts were already alerted. He also alerted their sources for apprehending the culprits by intercepting the vehicle. Chandmari mobile petrols were already out for wholenight patrolling. He said that the CRPF in Chandmari P.S. sometimes used to cover their faces with black cloth; He came to know about the recovery of Jyotish Sharma's deadbody through Motorola sets contacting Geetanagar. He said that the Usha Court was not within Chandmari, but within Geetanagar P.S.

N.W. 2 Shri Mani Saikia was the O.C., Geetanagar P.S. He received the information from Bhagaban Ch. Haloi who lodged a verbal information at Geetanagar P.S. at 12. midnight. On 4.1.2001 at 12.12 A.M. simultaneously he received the information from police control from A.S.I. H.K. Kalita whom he instructed to inform all higher police officials, while he himself proceeded to the P.O. with Bhagaban Haloi., whereat Smti Anima Devi, wife of Jyotish sharma lodged a written FIR. whereupon the Geetanagar P.S. case No. 1/2001 was registered and investigated. The CRPF used to do the Checking on R.G. Barua Road during night, and in evening hours they used to check the lanes as well, but there was no checking by Army. There was an open field about 50 mtrs North-west of Jyotish Sharmah's house. The Maruti Zypsy came from south side and left by the lane behind K.S.L.P. school. There was no light at the time of kidnapping. Within ten minutes of receiving the information he informed the Addl. S.P, City Shri P.K. Dutta., but no feed-back was received from anybody. On enquiry Shri Numal Gogoi O.C. Chandmari P.S. said that none came to Chandmari P.S. While Shri Mani Saikia did not arrest any person in connection with case No. 1/2001, The CJM, Guwahati, granted his

prayer to show one Pratap Kalita @ Nag already arrested in Fatasil Ambari case Mo. 5/2001, to show him as arrested also in Geetanagar case No.1/2001. Similar order was passed in case of one Ramesh Deka of Jagikona Village.; and a pistol, already seized from him by Rukma Buragohain of Garchuk outpost, was again seized from him in Geetanagar case No.1/2001. Shri Mani Saikia received the deadbody recovery information at 8.15 P.M. on 4.1.2001 and went to that place of occurrence at 6 P.M. on 6.1.2001 and he seized 2 Nos of Empty .9 mm cartridges there. S.I Shri M.A.Laskar was investigating the Nalbari case 6/2001. He already recovered 1 empty cartridge and 2 broken bullets from the place of occurrence and from the deadbody respectively. Nothing is on record as to what happened to those material exhibits. Mr. Mani Saikia was exceptional to have found and collected 2 Nos of .9 mm cartridges and obtaining a forensic report to the effect that the two empty cartridges he doubtfully recovered after Mr. Laskar had already recovered some, and that too after the funeral of Jyotish Sharma was over on 5.1.2001, in the afternoon of 6.1.2001, as also in obtaining the Ballistic examination report that the firing pin marks on the two .9 mm cases tallied with the pistol he seized from Rukma Buragobain of Garchuk outpost. We highly value what the investigating officers find, but in this case the entire episode, from picking up the two empty cases on 6.1.2001 from the P.O. wherefrom Shri M.A. Laskar, the Nalbari I/O of the case already recovered an empty case and two broken bullets from the deadbody, and there is no trace thereof on the records..

Shri P.K.Dutta, the then Addl S.P. Gauhati City said that on being informed by the O.C. he instructed him to alert all the police stations of Gauhati City and also to tighten patrolling so that the Maruti Zypsy could be intercepted.

N.W. 3 Shri P.K.Dutta, the then Addl S.P. Guwahati City belonged to 1997 D>S>P> batch, which had to undergo basic police training in Punjab, but Shri K.P.S. Gill was not imparting any training to them, though IGP. Assam imparted one day training there. Shri Dutta was promoted as Addl. S.P. in 1999. The S.P. distributed the works to his subordinates. He was to see the works of 16 police stations under Guwahati City, as and when situations demanded. Generally oral, but in special cases, written instructions were given at the Police stations. In each police station he had to inquire into the nature of the various crimes committed in different police stations and to give specific instructions where necessary. However, terrorist, extremist and insurgent activities were not included within his duties. The S.P. was in charge of those activities. The police stations had to deal with them. According to Mr. Dutta, the United Command Structure was not there in the city, that means he was not to deal with such operations in the City. The operations with regard to terrorist, extremist and insurgent activities were not within his duties. There was no Addl S.P. City (operations) Shri Bhaskar Jyuti Mahanta and Shri G.P.Sing were the S.P. s dealing with such matters in the city. However, it was not clear how he could distinguish the cases arising out of apparently normal situation and those arising out of terrorist, extremist and insurgent situations at the police Station stage.

Shri P.K.Dutta visited the place of occurrence next morning, but did not specifically meet any member of the victim family though he talked to number of persons present there. He was informed of the amalgamation of the Nalbari and Geetanagar cases, by order of the Addl. C.J.M. Nalbari, and of the shown arrests of Pratap Kalita, Ramani Kalita, both ULFAs, and Ramesh Deka @ Nag, a school teacher having some relationship with ULFA. He did not remember if any SULFA was suspected in the Geetanagar case. He knew Usha Court not being far from Geetanagar P.S., that Jugal Kishore Mahanta and few other SULFAs stayed there and that the funeral procession of Jyotish Sharma, while passing by Usha Court, shouted slogan "SULFA Murdabad" and even then Geetanagar did not interrogate any SULFA. He did not agree with

the suggestion that he knew that the people believed and the news papers reported that SULFAs did the killing and said that investigation showed ULFA-ULFA clash. He said that Pratap. Ramani and Ramesh were not interrogated on causation of the incident nor were they examined as witnesses in this case. In the absence of such interrogation and finding, there was no basis for suspecting that it was an ULFA-ULFA dispute as mentioned by Mr. P.K.Dutta. It may be mentioned that both the SULFA leaders examined before the Commission said that ULFAs did not harbour any ill- feeling against the SULFAs as was generally said.. On the other hand they said that ULFAs wished the SULFAs to merge with society. In view of this the imaginary ULFA to have caused the killing of Jyotish Sharma may be doubted. Besides, Jyotish Sharma was not an ULFA to fit in that hypothesis. The SULFA hypothesis was factually preferable from the public skogan slouting in front of Usha Court and description of the assailants given by the inmates, and the modus operandi compared with the Nalbari P.S. case No. 1/2001 which also was an ULFA relative's case, of same night. It is clear in this case that there has been some attempt to cover up SULFAs and present incorrectly that it was an ULFA_ULFA affair and suspicious recovery of empty cases and paper arrest and seizing of the pistol already seized in another case and managing a forensic report, if correct, were all attempt to waylay the investigation, with oblique motive. There was also an enticing Maruti van introduced by an annynous caller having inside it 5 No.s of live A.K. 47 ammunities, at Amingaon roadside. The displayed registration No. was found to be false. Fortunately, the investigation was not way-laid by it.

There was a Fatasil Ambari Casr No. 5/2001 under Unlawful Activities Prevention Act and one Pratap Kalita @ Nag . a SULFA was arrested, and on his information one Ramesh Dekka's house was searched by Rukma Buragohain I/C of Garchuk outpost and a . 9 mm pistol was seized. The seized pistol was alleged to have belonged to one Ramani Kalita, said to be an ULFA. From this it is sought to be suggested that the pistol belonged to ULFA Ramani Kalita and the case was result of ULFA-ULFA conflict. But the suggesyion has two vital flaws. First, the pistol has not been proved to have belonged to Pratap Kalita, nor his ULFA membership is proved, Secondly, the empty cases proved to have been tallying with the .9 mm pistol were those recovered by I/O Geetanagar on 6.1.2000 after the Jyotish Sharma's funeral was over, while one empty case was already discovered from the P.O. by Nalbari I/O. on 4.1.2000 itself and two broken pieces of bullets were found lodged in the body and were taken out at the post mortem examination. In view of that the finding of two more 9 mm empty cases after so long a time after the incident makes the whole exercise suspicious. On top of that the ballistic report of the first found Nalbari empty case and broken bullets are not to be found in the C.D. It is surprising as to how the two more cartridges recovered by O.C. Geetanagar could not be recovered by I/O M.A. Laskar, and why no ballistic report thereof was available on records and why those were not seized. Be that as it may, the jurisdiction of the murder case was Nalbari and Geetanagar need not have undertaken this exercise at least before the amalgamation of the two cases. The O.C. Geetanagar said that no security cover was given to Jyotish Sharma's Nabin Nagar house, other than general patrolling in the area.

The centre of gravity of the case, after the deadbody was found, shifted to Nalbari. *Crimen trahit personam* crime carries the person. Though the killed was kidnapped from Guwahati, the crime of murder was committed in Nalbari, where the firing sounds were heard and the deadbody was found. Nalbari was the *situs of the crime*. Accordingly the Nalbari P.S. case No. 6/2001 was registered and investigated. C.D. thereof shows that the villagers of Katala Borkuchi heard the firing sounds at night and the deadbody was found on an E.N.D. embankment over the Pagladia river, with the eyes tied with cloth. The I.O. recovered from the P.O. one . 9 mm empty case and two broken parts of fired bullets were recovered from

the deadbody at the Post Mortem examination. Funeral was held at Guwahati on 5.1.2001. On 6.2. 2001 the I.O. of Geetanagar P.S. went to the Nalbari P.O and recovered 2 No.s of .9 mm series, which was of prohibited bore. The Nalbari case No.6/2001 was under S.302 IPC. One 9 mm pistol was seized in the Fatasil Ambari P.S.case No. 5/2001 from Garchuk Outpost of Fatasil Ambari P.S.; and the same pistol was again seized from I/C. Rukma Buragohain of Garchuk outpost in connection with Geetanagar P.S. case No. 1/2001.

(C) *Whether there was any conspiracy in targeting the victim and the motive behind such killings.*

(I) **Conspiracy** in targeting the victim..Conspiracy. in the context of the instant inquiry, will mean criminal conspiracy as defined in Section 126A of IPC as follows:.

“when two or more persons agree to do or cause to be done .-

‘(1) An illegal Act, or

(2) An act which is not illegal by illegal means , such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.- It is immaterial whether the material Act is the ultimate object of such agreement or is merely incidental to that object..

Abetment of a thing. As defined in Section 107 of the Indian Penal Code (IPC)

“ A person abets the doing of a thing . who-

First- instigates any person to do that thing; or

Secondly- engages with one or more other person or person or persons in any conspiracy for the doing of that thing.if an act or illegal omission takes place in pursuance of that conspiracy , and in order to the doing of that thing ; or

Thirdly, Thirdly, institutionally aids , by any act or illegal omission, the doing of that thing.

Explanation -1.A person who, by wilful misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures , or attempts to cause or procure, a thing thing to be done, is said to instigate the doing of that thing.; or (Illustration omitted).....

Explanation -2 Whoever either prior to or at the the time of commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act”.

The law and jurisprudence of conspiracy has been discussed in para 10 of General part of this report; the same is referred to...The question whether there was any conspiracy or not in the killing of

Shri Jyotish Sharma has to be decided on the basis of the law, and facts in evidence on record. In case the answer is in the affirmative, then also the question will be as to who were the conspirators?. P.W. 1 Smti Anima Devi stated that earlier also there was firing incident in her house in search of her brother Subhas Sharma and that her son was injured. The instant incident must have been another in the chain of action. There were 6/7 persons in the group of the kidnappers, and their state,emt that Jyotish Sharma was taken to locate a house at Chandmari and thereafter he would be dropped was a false plea to entice him away. The modus operandii was the same as in other cases of the type. The police-like white Maruti Zypsy might have been provided by police, and that was the reason why the vehicle could not be intercepted by any patrolling party. Smti Anima Devi also said that on other dates, and even on that night prior to the incident there used to be light on the oprm field near their house, but

when they opened the door responding to the call of the assailants, the light was off. Under the facts and circumstances of the case there can be no other answer than that there was criminal conspiracy in the course of action culminating in the killing, by act of shooting Jyotish Sharma. And there was also a course of conduct involving the deciders of the course of action culminating in the killing. Considering the facts of this case in light of definition of conspiracy it can surely be held that there was a long drawn course of action amounting to conspiracy in the killing of Jyotish Sharma.

(II) Motive. While the witnesses appeared to have deposed that the killing was done with a view to induce ULFA Subhas Sharma to abandon its insurgent activities, in the Nalbari case the clue lay in the killing of SULFA leader Abinash Bordoloi on 3.1. 2001. True that this case has some similarity with the Nalbari P.S. case No. 5/1001. However, the very fact that one event followed the other may not establish any causal connection, as we were taught that the fact that the child died as soon as the moon was seen in the sky, does not establish any causal connection between the two. The causal connection must be established otherwise also. Amti Anima Devi has said that Jyotish Sharma was killed by some people only because Subhas Sharma, an ULFA leader was related to him, he being her own brother. That involves the SULFAs/ This seems to be consistent with the slogans shouted by the funeral processionists of Jyotish Sharma. The modus operandi also appears to be the similar. But there appears to be something more. Did the assailants come from Nalbari, or from Guwahati itself. Nobody deposed as to which place the police-like Maruti Zypsy belonged. It is not likely for someone going from Guwahati, kidnapping Jyotish Sharma from Nabin Nagar and taking him to Nalbari, kill him there and come back to Guwahati. Comparatively, it is more likely for someone from Nalbari, kidnap him from Guwahati and shoot him down there and escape. The assailants immediately on opening the door asked Jyotish Sharma's name and whether he belonged to Nalbari. That may be indicative of some relationship with Nalbari. The white Maruti zypsy was more likely to have come from Nalbari. The Commission may suggest the involvement of some of the Nalbari Police Reserve sheltered SULFAs directly, and the police-Sulfa nexus, aiding, exciting and facilitating them as the indirect accomplices/accessories. Again, from the manner and scale of designing, planning and execution, the conclusion is natural that there must have been remote orchestration, of course, the remote being at Home.

(D) Pinpointing responsibility on persons involved directly or indirectly in kidnapping and killing.

This is the most difficult task of the Commission. In the absence of effective direct evidence, we have to depend on relevant circumstantial evidence. That too is not forthcoming in such measures as could help us in pinpointing responsibility on the persons involved. The apex court has said that conspiracies are often hatched in secrecy; and that circumstantial evidence is the only type of evidence available in such cases. Fortunately the term of reference mentions "involved directly or indirectly in commission of killing" This enables us to act on basis of integrated evidence rather than on isolated ones. We have therefore to integrate such parts of evidence as will lead to a conclusion beyond reasonable doubt, for pinpointing responsibility. Besides what are found in relevant pieces of evidence, the common characteristics found in each individual case also throw some light. We may also rely on the following principles of evidence enunciated by authorities on the law of evidence.

Best on "The Principles of The Law of Evidence." (9th ed) in its Introduction (pp.4-5) said:

6. "With regard to intensity of persuasion, the faculties of the human mind are comprehended in the genera, knowledge and judgment. 1. By "knowledge" strictly speaking, is meant an actual perception of the agreement or disagreement of any of our ideas ; and it is only to such a perception that the term "certainty" is properly applicable. Knowledge is intuitive when this agreement or disagreement is perceived immediately, by comparison of the ideas themselves; demonstrative when it is perceived mediately, i.e, when it is deduced from a comparison each with intervening ideas which has a constant and immutable connection with them, as in the case of mathematical truths of which the mind has taken in the proofs, and lastly through the agency of our senses, we obtain a perception of the senses the existence of external objects, our knowledge is said to be sensitive. But knowledge and certainty are constantly used in a secondary sense, which it is important not to overlook; viz, as synonymous with settled belief or reasonable conviction; as when we say that such a one received stolen goods knowing them to have been stolen or that we are certain or morally certain, of the existence of such a fact etc."
7. 2. "Judgment", "the other faculty of the mind though inferior to knowledge in respect of intensity of persuasion, plays quite as important a part in human speculation and action, and, as connected with jurisprudence, demands our attention even more. It is the faculty by which our minds take ideas to agree or disagree, facts or propositions to be true or false, by the aid of intervening ideas whose connection with them is either not constant and immutable, or is not perceived to be so.. The foundation of this is the probability or The best evidence rule ."Phipson on Evidence," 9th ed. P. 51 under caption : "The Best Evidence Rule. Strict Proof" Says: "The maxim that "the best evidence must be given of which the nature of the case permits." has often been regarded as expressing the great fundamental principle upon which the law of evidence depends. Although, however, it played a conspicuous part in the early history of the subject, the maxim at the present day affords but little practical guidance. The applicability of the rule depends on the nature of the subject to be proved. In the complicated nature of things today the emphasis has somewhat changed. (P. 53) According to Phipson, "In the present day, then, it is not true that the best evidence must, or even may, always be given, though its non-production may be matter for comment or affect the weight of that which is produced. All admissible evidence is in general equally receivable. Thus, circumstantial evidence is no longer excluded by direct, and even in criminal cases the *corpus delicti* may generally be established by

either species, or, indeed, by the defendant's mere admissions out of Court".

The following common characteristics of the first group of seven cases are found in this case . while answering its terms of reference so as to justify a finding of a general plan of "Ulfoside" i.e., deliberate killing of ULFAs and their relatives on their basis. namely:

1. That this killing involved an ULFA related family, being that of the ULFA leader Subhas Sarma)and its investigation is kept pending but no clue. None has been accused or arrested.
2. As in other cases, this killing, of Jyotish Sarma at dead of night at Katala Borkuchi village, Nalbari Kidnapping was also at dead of night and light was off before and thereafter, to allow the assailants to escape under darkness.
- 3.. The assailants covered their faces with black wrappers and caps, to avoid being identified. But they spoke in Assamese and called Jyotish as *Sarmada*, *Sarmada* indicating that they knew him.
4. The weapon used in killing was a firearms of prohibited bore being generally found in police-military situations

5. The firearms being of prohibited bores, forensic examination of the material exhibits was avoided, but substituted ones sent for forensic/ballistic examination exceptionally promptly and report was collected quickly. Investigation fizzled out..
6. The vehicle used was reportedly a Maruti ZYpsy, a type normally used as police vehicle. without number plate which was never seized or taken into custody.
7. There were police patrolling in the crime areas prior and posterior to, but not during the killing.
8. That there was lurking evidence of Police-SULFA nexus in the killing, some of the latter being constituted into an extra-constitutional authority and used as the executioners..the *modus operandi* being *to visit the family, ask members to persuade its ULFA member to surrende*, failing which, to come afterwards and shoot /them dead,?.
9. There was general resentment and decry against the SULFA.
10. There was connivance of SULFA; and omission to make any SULFA an accused despite clues..
11. The investigation did not commensurate with the seriousness of the crime perpetrated..
12. That modern scientific methods of investigation, finger/foot prints, dog-squads were never used.
13. No condolence message was sent from the Govt. of Assam to the victim family.
14. No ex-gratia/compensatory payment was made or offered by the Govt. of Assam.in this case.
- 15 In this case death penalty has been imposed for "status offence," on Jyotish Sharma for being a member of ULFA related family, of the ULFA leader Shri Subhas Sharma of Nalbari..

16. From some cases "remote orchestration" and principle of "kill and get killed" are deducible.

remote might be at Home. This conclusion is based on the similarities of the seven cases in all respects, which could not be so unless there was remote orchestration from higher authorities. The remote was supposed to be at Home. The kill and get killed applied to a SULFA leader.

Status Offence. Glanville Williams in his Textbook of Criminal Law discussing offences without conduct writes: (p.36). "One might suppose, then, that the requirement of some relevant conduct, whether by act or culpable omission, would be regarded as the foundation of every criminal charge; and that knowledge of this rule will be part of the elementary learning of the lawyer- a *pans asinorum* in every examination for the bar or for the solicitor's profession. As will have been gathered, the assumption would be wrong. partly because of some of the wording of the legislation and partly because of the failure of the courts to develop a liberal principle of interpretation, an offence can be committed without any act or culpable omission at all. The offences of this type have been aptly called status offences; they are committed by people who simply find themselves with a particular label. (It is perhaps not without significance that status offences commended themselves particularly to tyrannical regimes; the criminal code of Stalin's Russia abounded with them, as for example, the offence of being a relative of an enemy of the people.)

- ✓ Jyotish Sarma was killed for his being member of a family related to the family of the ULFA leader Shri Subhas Sarma, as if an "enemy of the people," as decided by the then authority in power; and executed by its agents and collaborators. The nature, design, and plan of execution shows that there would be no obstacle in its execution and escaping detection. Who else could execute it in the way it was done?. Then the information

recording, investigation, and recordings in the department, failure to find any clue, fizzling out of investigation for so long, leaves no doubt about complicity of the law enforcing authority in the matter. All these are to be equally found in all the cases in this group. Therefore, there is no escape from the conclusion that there has been remote orchestration, and the remote most likely to have been at Home.

By the terms of reference we are to find out the motive of the killing. Witnesses deposed that there could be no other reason for killing of Jyotish Sarma except because he was member of the ULFA related family being related to ULFA leader Shri Subhas Sarma.. "Status offence." is reminiscent of some such provisions as to status offences in Stalin's Criminal Code.

testimony vouching their observation or experience but this is clearly a branch of the former, as our belief in such cases rests on a presumption of the accuracy and veracity of the narrators." As the saying goes. "a truth like murder will be out". A sequentially integrated evidence may lead to the truth.

Questioned on the two cases, namely, that of killing of Dimba Rajkonwar, Dibrugarh, and that of Dr. Dharanidhar Das and family, Barama, Shri G.M. Srivastava said: (A., 88) Normally police compares the cases on the basis of *modus operandii* and circumstances. Considering the facts evident in this case in light of the above principles, the Commission holds the were examined by the I/O and who prepared the self exculpatory statement, verbatim the same for all of them, directly responsible and all those who participated, assisted, excited, and abetted in commission of the murders indirectly involved in the case. This being a criminal matter, we hold so beyond reasonable doubt Considering the time of the murder, weapons, and vehicles used, and instigation and exciting and planning the series of actions and lastly remote control making the action free from hindrances and lastly, rendering the criminal investigation and prosecution, ineffective, and all other alternative hypotheses have not been proved beyond reasonable doubt.

(D). Recommendations to prevent recurrence of such killings.

With its limited knowledge, experience and wisdom, to prevent recurrence of such killings, the Commission would like to make twofold recommendations, namely, (1) the immediate, and (2) the long term.

- (1) The immediate measure is, first to try to keep in abeyance, and then gradually dismantle the existing Unified Command structure. which is created by an Order of His Excellency, the Governor of Assam and neither by a statute nor a statutory order. It is only an arrangement agreed to by the Centre and the State Govt. regarding deployment and operation of the armed forces and other forces of the Union deployed by the Central Govt, "in aid of civil power" of the State of Assam, on request/ requisition by the State Govt. The Structure itself envisages its review after every three months; and there is no limit to the review and may even envisage its dismantling. The parties concerned may agree to dismantle it in the same way they agreed to create it. The constitutional position as to deployment of the armed forces and other forces of the Union in a State has already been discussed in para 14 of "Part I. Introductory." of this report and is referred to in this context. The deployment of the armed forces and other forces of the Union in the State of Assam has been "in aid of the civil power of the State." In case of the civil power of the State being sufficient enough to cope with its civil problems, *ex hypothesi*, there is no need of armed forces or other forces of the Union for the State.. The armed forces and other forces of the Union were deployed to cope with the internal disturbance thought to have been caused by the activities of the banned outfits disturbing the area leading to its

declaration as a disturbed area under the Disturbed Areas Act/ The Assam and Manipur Special Powers Act.1958, as amended in 1972. However, the disturbance in the State of Assam has to a great extent been under control. The life in the State has become normal. The last Assembly election could be held without any disturbance, thanks to the co-operation of the local banned outfits. This may be an appropriate time for effective talks with the local outfits to observe cease fire. first for a short period, say six months, and for gradually longer and longer periods, and for restoration of normalcy and confinement of the armed forces and other forces of the Union to the barracks, and on continuation and assurance of normalcy, ultimately withdraw, on an assurance of peace on the part of the banned outfits and ultimately lifting of their bans themselves. To achieve this, strenuous, but cordial, talks between the outfits, the State Government and the Central Govt would be necessary; and there is no reason why such talks should not succeed for restoration of normalcy. Disturbance and insurgent activities invited the Unified Command Structure. It is in the hands of the people to assure that peace will be maintained and insurgent activities will be curbed and normalcy will be restored. If the public are serious in this restoration of normalcy, there can be no earthly reason why such a situation cannot be brought about by mutual co-operation of the State and its people. Modalities may be worked out in consultation and cooperation among the Government, the political parties, student organizations, the outfits and the general public. Restoration of normalcy will also effect economy..Meanwhile, in the interest of peace and tranquility, there should be no witch hunting. Constitutionally speaking, restoration of normalcy is the terminus of internal disturbances and army deployment in the State.

- (2) The long term measures are meticulous observation of the provisions of the Constitution and the laws in carrying out each and every function of the government. All the departments of the Government must function faithfully in accordance with the mandatory provisions of the Constitution of India. In other words, the **long term measures** may include, in the long run, the faithful obedience to, and implementation of, the Constitution and the laws of the country, The Centre-State relationship must also be in accordance with the mandates of the Constitution. Guidance of the famous Sarkaria Commission's report will be helpful in this regard. Manusmriti also said (Buller) VIII, 351. "By killing an assassin the slayer incurs no guilt, (whether) he does it in public or secretly; in that case, fury recoils upon fury." 386."That king in whose town lives no thief, no adulterer no defamer, no man guilty of violence and no committer of assaults attains the world of Sakra (Indra)";420. "A king who thus brings to a conclusion all the legal business enumerated above, and removes all sin, reaches the highest state (of bliss)" **Sukracharya's Dandaniti is based on danda** , meaning, punishment. Ancient sages said that without *danda matsyanyaya will prevail* and the strong will devour the weak, even the sacred *prasada* of the *yajna* will be swooped at by crows. *Danda* keeps awake when the country is asleep. All people have innate goodness in them, but some do not. In the absence of punishment those will demoralize others in the society. The norms and laws of today are not materially different. Secret killing amounts to denial of all the constitutional, legal and human rights to the killed, and violation of all these rights by the killer. If killing is by public authorities, it also means trampling over the oaths taken by them on assumption of public offices. The society need be protected from the people with such dangerous propensities. It is trite learning that every action has a reaction, fury begets more fury and that brutalities generate more brutalities. Continuous disturbance of the even keel of the society and some excesses committed by some elements had to be checked by equally harsh measures, but that would not justify the lawfully established Government in abdicating

its powers, duties and responsibilities to extra-Constitutional organs jeopardizing the legal, fundamental and human rights of the citizens of sovereign, socialist and democratic Republic of India.. Those who are entrusted by the people to govern them, ought to be well versed with the provisions of the Constitution of India and the relevant laws, rules, and administrative instructions, and orders framed thereunder. They should be aware of the constitutional limitations as also the rights of the citizens of the State against their State itself. Fundamental rights of citizens, including rights to life, liberty, freedoms, non-discrimination etc. must not be violated. They must never have propensity to kill the citizens they govern, secretly or openly. They must not harbour any kind of hatred, ill-will or dislike on numerical, religious, communal, racial, ethnic, social, historical, entities of any sort whatever. At the minimum they should be true to their oaths and be absolutely free from corruption in any form and manner..While no training course will be appropriate, considering their exalted position and prestige, periodical seminars and discussions at government levels may refresh their knowledge and experience.

The Police force of the State has been in urgent need of advanced training in all aspects and subjects. With advancement of sciences and technology the behaviour of the people get adjusted to them, thereby necessitating advanced system of policing and crime detection. There should, therefore, be periodical trainings in human rights, criminology, penology and preventive systems. It is high time that State makes suitable provisions for all their ranks. Police is the first State agency to protect all sorts of rights of the people, and must therefore, be sufficiently equipped for their protection.

Regarding the SULFAs suspected, it may be appropriate to observe that because of the position in which the SULFAs found themselves, between the devil and the deep sea.. their erstwhile colleagues having been deserted by their act of surrender, they deserved adequate protection, But using their services as "guides, "spotters". Trouble-shooters and collaborators in police functions could never be viewed as proper treatment meted out to the SULFAs, far less their being used as the striking arm or the men in charge of execution. Let them now be bereft of the hallowed positions, and give them fair field and no favour, at least following the insolvency principle of allowing the declared insolvent to have a fresh start in life. How the erstwhile affected people will adore or avoid them will be a different matter altogether..

So far as the Government wings, agencies, and authorities, both official and political, the principle of "responsible superior" will surely apply; and for all the lapses and misdeeds at the lower levels, higher levels authorities shall be held liable and be subjected to proper punishments. So far as political and minister level authorities are concerned, the principle of collective responsibility will hunt out all those who were forming Government in the State at the relevant period. This principle of collective responsibility will hunt them out wherever they happen to be, during the period following the violation of Constitutional and legal rights of the affected citizens whose fundamental and other legal and human rights were violated during their faulty governance. But even here the insolvency principle should be followed and the political insolvents also be given fair field and no favour in the ensuing political process of the State. Let there be no withch hunting of any sort. How the same affected people will accept or reject them will, of course, be an entirely different matter..

The Police department is the first resort of the people for protection of their life, liberty, property etc. Spreading disaffection towards police is an offence. Everyone has the duty to help police in restoring law and order in society. There is no doubt that our

Police force is one of the best in the country. To make our police still more and more efficient and instructed, some officers, by turn, may be sent for advanced training in detection and decision in modern crimes and criminal practices. Such trained police personnel may be put in the police training College. They should undergo a training course in human right and cyber and other present day crimes and crime prevention.

(F) Any other matter related or relevant to the inquiry.

Under this term of reference the Commission has decided to discuss the "related or relevant" matter of adequate ex-gratia or compensatory payment to the family of the victim Jyotish Sharma, commensurate with the loss and deprivation suffered and obstacles encountered by it in its development in the line. and to the extent, hitherto planned by the deceased. **We are all proud of our welfare State. In case of any mishap or calamity befalling any one or more of our citizens or families, the welfare State considers it to be its duty to render rescue and relief to the affected persons, more so when the sufferers have reasons to feel that the State itself was the immediate, or even remote, cause of the misery. The rendering of rescue, relief and recompense is irrespective of any fault on the part of the State. It is really praiseworthy of the Chief Ministers of the States in India to have instantly announced such reliefs and rehabilitation packages, and offer in appropriate cases employments to the surviving eligible members of the families, inasmuch as sometimes the very bread earning patriarch is lost to the family. Even the Legislature has now provided for payment of suitable "no-fault liability" compensation irrespective of the claim for fault liability. In the instant case the bread-earning patriarch of the family, Shri Jyotish Sharma, has been shot dead under the circumstances discussed in the case. The public prosecution may result in punishment of the culprits, but that itself will bring no financial and livelihood replenishment of the loss suffered by the survivors, including the minor children of the bereaved family. The Commission, as submitted by the learned senior counsel for the Commission and the learned Senior Government Advocate, Assam, and for the ends of distributive justice, doth hereby direct the State Government of Assam to pay to the widow of the victim, Smti Anima Devi, for the benefit of the family, a sum of Rs.5,00,000 (Rupees fivelakh) only forthwith. More than five years have already elapsed, and it brooks no farther delay. Directed accordingly.**

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DWIJEN HALOI & PULEN HALOI KILLING CASE

Nalbari P.S. Case No. 5/2001

(**A) Circumstances leading to the killing of the Dwijen Haloi and Pulen Haloi.**

A telephone information was received at the Nalbari P.S. on 4.1.2001 from one Sri Makhan Goswamy that a firing incident took place in the house of Dwijen Haloi. Making G.D. entry

No.106 dated 4.1.2001, the O.C. directed S.I. Sri S.R. Malakar to take necessary action and accordingly Malakar rushed to the P.O. at 1.30 A.M. On 4.1.2001 at about 6 A.M Sri Rajani Kanta haloï s/o Deep Chandra Haloï of Nalbari Khat, ward No. 12 lodged FIR at the Nalbari P.S. to the effect that some unidentified armed and masked youths came to the house of his elder brother Sri Raja Kanta Haloï and tried to open its door and windows and ultimately broke open the door of Pulen Haloï's room and they took him to show Dwijen Haloï's room wherein Dwijen Haloï was sleeping and they shot dead Dwijen Haloï (54), and thereafter shot and injured Pulen Haloï (20), and a guest Arup Talukdar(18) and fled away.. Both of the injured were shifted to Nalbari Civil hospital for treatment, but Pulen succumbed to his bullet injuries, and Arup was shifted to the Guwahati Medical College hospital.

The I.O. Sri S.R.Malakar visited the place of occurrence about 1 k/m. away on the south west of the P.S. He found the dead body of Dwijen Haloï lying on the floor

of his bedroom. He took a photograph of the P.O. with the deadbody. The army personnel from the 5 Jakli, Indian Army from the Gopal Bazar camp also arrived at the P.O. and recovered 5 No.s of empty cases of 9 mm. series and 3 No.s of A.K. 47 series, and handed over to police. They also conducted search operation in the nearby area. Police seized 5 No.s of empty cases of A.K. 47 series and 3 No.s of empty cases of 9 mm series. These materials were sent for examination to the 14th A.P.Battalion Daulasal for examination.

(B) Identity of the killer(s) and accomplice(s), if any.

In the Nalbari P.S. case No 5/2001 the killings of Dwijen Haloï and Pulen Haloï were secret as to the identity of the killers. This is a developed principle of law that accomplices are the parties to the crime. On the basis of degrees of complicity to the crime, accomplices are divided into perpetrators and accessories. An accessory is one who excites or helps the commission of a crime by the perpetrator. Perpetrator is exclusively the person who in law performs the crime. More precisely, the perpetrator is the person who, being directly struck at by the criminal prohibition, offends against it with the necessary *mens rea or negligence*. By notification the identity of the killers is yet to be determined We discussed the meaning of "secret". In Part 1. Identification of the killers has to proceed on the basis of investigation and evidence.

The case was investigated by S.I. Sri S.R.Malakar and the O.C.. The D.S.P.(HQ) Nalbari, and the S.P., Nalbari supervised the investigation. The leads followed will be clear from the persons examined by police. The I.O examined 7 persons at the initial stage, namely, Rajani Kanta Haloï, (complainant), Sri Bapan Haloï (who first informed Makhan Goswami who telephoned to P.S.), Sri Sabin Das, Sri Anil Haloï, Sri Makhan Goswami(who telephoned to P.S), and Smti. Bharati Kalita Haloï (wife of Dwijen Haloï) The I.O. also examined the town area patrolling party men, and some SULFA activists in the Nalbari Police Reserve lines, namely, 1.Sri Tapan Talukdar, 2. Parameswar Rajbangshi @ Pinku. 3.Mrigen Haloï s/o Deben Haloï, 4. Suren Deka @ Suren Roy and 5. Sailen Roy @ Sarat Deka. He also examined SULFAs 1. Ganesh Kumar s/o Ranjit Kumar of Kandu P.S. Nalbari, (2) Dinesh Das s/o Dharma Das of Vill. Burinagar and recorded their statements, but said that none could give any clue to the culprits. From Rajani Haloï it was known that the 6/7 miscreants came at about 1.30 A.M. on 4.1.2001 6/7 armed miscreants were masked in the sense that they covered their faces with dark cloths and wore monkey caps. This must have been with a view to avoid being identified. The investigator was aware of the killing of Sri Abinash Bordoloi, a prominent SULFA leader, in an ambush on 3.1.2001, which would naturally have enraged the SULFAs. But curiously, the investigator thought that all the SULFAs sheltered inside the Nalbari police reserve lines were very much afraid of coming out in the night of 4.1.2001, and,

therefore, frantically tried to foist it on some imaginary ULFA killing the relative of another ULFA which was less likely than the other alternative of enraged SULFAs killing relative of an ULFA leader. Smti Bharati Kalita Haloi, widow of Late Dwijen Haloi, deposed that on 3.1.2001 at about 1 A.M. when herself, her husband Dwijen Haloi, their children Ankur and Barnali were sleeping in one room and their cousin Pulen Haloi in another, they heard the sound of a vehicle coming and stopping near their house and also heard footsteps sounds of coming to their house, which awakened them. and felt that their house was surrounded, one standing at each of the doors; and that 10/12 persons were there. Then they heard knocks on their door and call as *Dwijenda, Dwijwnda, dorja khulak, dorja khulak*. They knocked at several of our doors, perhaps not knowing which was ours. Some of them also pushed the door of the room wherein Pulen was sleeping. In Pulen's room my husband's maternal uncle's son Shri Arup Haloi was also sleeping. Pulen was awakened and brought out to our door and he was made to call my husband Dwijen from outside. As Pulen asked my husband to open the door, I pressed the door putting my weight, advising my husband to go under the bed; I told pulen that Dwijen was not at home. At this stage the miscreants by some device opened the door and four persons entered the room and blocked her movement and searched and found my husband under the bed and shot him dead there. This was about 20 minutes after they came. They then went towards Pulen's room and made Pulen sit on the varendah and shot him there. The killers then left but returned again and shot Arup under the quilt which injured Arup. Bharati Haloi said that against each door 3 to 4 persons stood and called in Kamrupi tone "*Dwijenda, Dwijenda, dorja khulak, dorja khulak*", and that their tone became harsher and harsher as door was not opened. She also said that when she told pulen that Dwijen was not at home, they said: *Bow dorja khuli de Bow dorja khuli de*. The assailants applying some device opened the door and 4/5 persons immediately entered the room and tried to find out her husband and finding him underneath the bed they shot him dead there itself. They wore black pants, coats and caps covering their faces and saw through eye holes. Coming out of the room they made Pulen sit on the varendah and shot him there. Then they all went out, but suddenly returned and shot at Arup who was under the quilt. When she cried for help Rajani Haloi, elder brother of Dwijen came, pulled out Dwijen from underneath the bed, and as he was given some water, he expired. Pulen was a student and unmarried.

Cross-examined by Mr. P.K. Musahari, Bharati Kalita Haloi said the assailants came near the room and called *Dwijenda, Dwijenda, dorja khuli de* and that 3 to 4 persons stood near each door, not knowing where we were, and all the groups called similarly. From the above it can be concluded that the assailants were Assamese speaking and they knew both Dwijen and his wife Bharati whom they addressed as "Bou". As regards light she said that a zero powered bulb was burning in the room, but the assailants switched on the main light. There was no varendra light of their own but the neighbour's light fell there sufficiently.

To a question why, she thought, her husband was targeted, she replied that she was the elder sister of ULFA leader Raju Baruah who was unsuccessfully attacked several times, failing which, they targeted his relative, her husband. She also said that the pistol with which her husband was shot would measure about 6 inches and had indicator light, every round. Witness said that army and police personnel did not come to her house before the incident, but some persons, who introduced themselves as 'reporters' used to come to her house and take informations, but she did not see those published while something else were published. Asked as to whether any person came to her house prior to the incident she replied in the affirmative saying that on the previous day of the incident 2 vehicles came at about 7 P.M., one was parked at Bishnupur Chowk and the other near their house. About 3 to 4 persons, aged about 25 years, were standing in the chowk, then my husband was going on bicycle to take a cup of

tea in a nearby hotel and when he was passing by them these boys called *putulda neki, putulda neki* mistaking him to be Putul, his (Dwijen's) younger brother Putul; and that the people took the two vehicles to police and on showing some paper by them, police allowed the vehicles to go. She, therefore, believed that those were in league with the police and that was why after the incident she telephoned to police, none came for help, and police arrived late at the place of occurrence. This made one point clear that these 3 to 4 persons also spoke in Assamese.

Case diary shows that on 7.1.2001 police interrogated SULFAs Tapan Kumar Talukdar @ Tufan Saliha, Shri Parameswar Rajbangshi @ Pinku, Shri Mrigen Haloi and Shri Suren Deka @ Satyendra Barman. Their statements under S.161 Cr. P.c. are verbatim the same, to the effect, (translated from Assamese)

"Earlier I was a member of the ULFA organization, but about a year back I surrendered before the Government and joined the main stream and now being SULFA, I am residing in the Police Reserve and working for the Government. On the night of 4.1.2001 we were inside the SULFA camp inside the Police Reserve, because on the previous evening one of our SULFA colleague Abunash Bordoloi was shot and killed by some ULFA member. Therefore, we, being afraid, confined ourselves to the Police Reserve. That night no SULFA member of ours came out of the Reserve camp. We are in dark about the Nalbari Town incident."

The question is how could all the statements be verbatim the same? It must have been written by the same person, in which case it ceases to be an investigation. The suspicion on the SULFAs was expressed by the inmates of the deceased. This was in the minds of the investigators, yet after examining few SULFAs they took the view that there was no sufficient proof thereof. The facts that the assailants spoke in Assamese, addressed Dwijen as "*Dwijenda*" and Bharati as "*Bau*" and the fact of Shri Abinash Bordoloi having been killed in an ambush, and the killer not yet announced, led to the suspicion of the SULFAs being the culprits in this case but the investigating officers and the supervising officers yet said that there was no clue and no one was arrested or charge sheeted.

The investigation of the case was supervised by the D.I.G (CWR), Assam, Guwahati, who instructed I.O. to take following steps:

1. To send the seized material exhibits to 14th APBN for examination.
2. To engage sources to find out the clue
3. To examine some of the SULFA activists to find out the clue of the case.
4. To arrest the culprits involved in this case
5. To examine the sister of Raju Barua Smti Bharati Haloi to ascertain whether any ULFA activist came to her house prior to this incident with Raju Baruah
6. To re-examine the injured Arup Talukdar who recovered from injuries.
7. To ascertain the assailants involved in the incident. As shown in the C.D. the I.O. took all the above steps, but no clue was yet found.

Examined under S.161 Cr.P.C Rajani Haloi said that on 4.1.2001 at about 1/1.30 A.M. hearing noise in Dwijen's house he came out of his house towards Dwijen's and he saw in front of Dwijens house some 6/7 armed and masked covering faces with black cloth and wearing monkey caps, first called and woke up Pulen and asked him which was Dwijen's house and being shown they repeatedly knocked at the door of Dwijen Haloi's room. And when the door was not opened the armed boys forced open Haloi's door and immediately entered Dwijen's room and tried to pull him out and as Dwijen, being afraid, went underneath his bed, they shot him dead inside the room. Then they pursued Pulen and shot and injured him and guest Arup Talukdar. Rajani Haloi did not mention the language in which the boys spoke, but as he and the inmates could understand what the boys said, it has to be taken to have been in Assamese.

Dwijem's son Bapon Haloi and other eye witnesses corroborated Rajani and said that after Pulen, the boys also injured his cousin Pulen and Arup, and left the place. I.O recorded (P.22) that he examined widow Smti Bharati Haloi and from her statement no clue could be taken. She said that the assailants asked her the name of her husband and as she mentioned "Dwijen", they shot him dead. It might be indicative of some relationship with her to have been relevant in Dwijen's killing, she having been the sister of ULFA Raju Baruah. Bharati Haloi is recorded to have doubted one of the boys to have been like one who came with Raju Baruah, but she clearly said that as their faces were wrapped with black cloth, she could not recognize any of them.

The P.M. report showed that Dwejen died of shock and hamorrhage due to the bullet injuries; and Pulen died of bullet injury and loss of blood from those injuries

Further it showed that no report from the Armourer 14th APBN was received, and that from visible appearance, according to I.O. 5 cases were of .9 mm series and 3 are of A.K. 47 series. The C.D shows that the investigation of the case is pending and no clue has yet been found.

The affidavit of Sri Deepak Kumar, I.P.S., S.P. Nalbari in para 3 states that on receipt of the information about the incident he rushed to the spot and directed concerning police officers to take necessary step about the incident. Sri Bidyut Burhagohain who was Additional S.P, Nalbari from 1.6.99 to 26.2.2001, in para 2 of his affidavit says that on 4.1.2001 he received the information about the incident in Bishnupur Ward No. 12 of Nalbari town on 4.1.2001 around 2 A.M. and with staff rushed to the place of occurrence, half a k.m away from the P.S. and arriving there he found Ghanashyam Bora, O.C. Nalbari P.S., and taking stock of the situation from the O.C.. sent the dead body to Nalbari Civil Hospital and that he was transferred on 20.6.2001 to North Lakhimpur district. Sri Ranjan Bhuyan, the then D.S.P. Nalbari stated in his affidavit that on receipt of the information he rushed to the place of occurrence and arriving there found that Nalbari police had already arrived, and he took the procedural investigative steps.

The question is how could all the statements of different SULFAs examined within Nalbari Police Reserve be verbatim the same? It must have been written by the same person, in which case it ceases to be an investigation. The suspicion on the SULFAs was expressed by the inmates of the deceased's family. This was in the minds of the investigators, yet after examining few SULFAs they took the view that there was no sufficient proof thereof. The facts that the assailants spoke in Assamese, addressed Dwijen as "*Dwijenda*" and Bharati as "*Bau*" and the fact of Shri Abinash Bordoloi having been killed in an ambush, and the killer not yet announced, led to the suspicion of the SULFAs being the culprits in this case .but the investigating officers and the supervising officers yet said that there was no clue and no one was arrested or charge sheeted in this case. The Commission is of the view that the SULFAs sheltered in Nalbari Polish Reserve, who were examined by the I.O., and who made the verbatim the same statements to the I.O. u.s 161 Cr. P.C numbering 6/7 could be identified as the culprits in this case, Among them, those who actually fired the shots and killed Dwijen and Pulen would be the perpetrators, and the others will be the accessories/ accomplices.

(C) To find out whether there was any conspiracy in targeting the victims and the motive behind such killings.

(I) Conspiracy in targeting the victim..Conspiracy. in the context of the instant inquiry, will mean criminal conspiracy as defined in Section 126A of IPC as follows:.

"when two or more persons agree to do or cause to be done .-

'(1) An illegal Act, or

(2) An act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.- It is immaterial whether the material Act is the ultimate object of such agreement or is merely incidental to that object..

Abetment of a thing. As defined in Section 107 of the Indian Penal Code (IPC)

“ A person abets the doing of a thing, who-

First- instigates any person to do that thing; or

Secondly- engages with one or more other person or person or persons in any conspiracy for the doing of that thing. if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly, Thirdly, institutionally aids, by any act or illegal omission, the doing of that thing.

Explanation -1. A person who, by wilful misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.; or (Illustration omitted).....

Explanation -2 Whoever either prior to or at the the time of commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act”.

The law and jurisprudence of conspiracy has been discussed in para 10 of General part of this report; the same is referred to...The question whether there was any conspiracy or not in the killing of Dwijen Haloi and Pulen Haloi has to be decided on the basis of the law, and facts in evidence on record. In case the answer is in the affirmative, then also the question will be as to who were the conspirators?. Evidence of Smti Bharati Kalita Haloi shows earlier some reporters came and met her and took informations from her which were never published. Two vehicles also came on the previous day of the incident and 3 to 4 persons were standing who mistook Dwijen to be Pulen. This must also have been part of the same plan. They also spoke in Assamese, and must have known Pulen and Dwijen both. The last act was that of killing wherein all must have taken part and must come under the definition of conspirators.

As regards the SULFAs in the Nalbari Police Reserve, in principle the reserve authorities having facilitated their activity could also be included for the purpose.

(D) Pinpointing responsibility on persons involved directly or indirectly in commission of murder.

This is the most difficult task of the Commission. In the absence of effective direct evidence, we have to depend on relevant circumstantial evidence. That too is not forthcoming in such measures as could help us in pinpointing responsibility on the persons involved. Fortunately the term of reference mentions “involved directly or indirectly in commission of killing” This enables us to act on basis of integrated evidence rather than on isolated ones. We have therefore to integrate such parts of evidence as will lead to a conclusion beyond reasonable doubt, for pinpointing responsibility. Besides what are found in relevant pieces of evidence, we may follow the principles of evidence enunciated by authorities on evidence..

Best on “The Principles of The Law of Evidence. Ninth Ed. in its Introduction (pp.4-5) said:

6. "With regard to intensity of persuasion, the faculties of the human mind are comprehended in the genera, knowledge and judgment. .1. By "knowledge" strictly speaking, is meant an actual perception of the agreement or disagreement of any of our ideas; and it is only to such a perception that the term "certainty" is properly applicable. Knowledge is intuitive when this agreement or disagreement is perceived immediately, by comparison of the ideas themselves; demonstrative when it is perceived mediately, i.e., when it is deduced from a comparison each with intervening ideas which have a constant and immutable connection with them, as in the case of mathematical truths of which the mind has taken in the proofs.. and lastly through the agency of our senses, we obtain a perception of the existence of external objects, our knowledge is said to be sensitive. But knowledge and certainty are constantly used in a secondary sense, which it is important not to overlook; viz, as synonymous with settled belief or reasonable conviction; as when we say that such a one received stolen goods knowing them to have been stolen or that we are certain or morally certain, of the existence of such a fact etc."

7. 2. "Judgment", "the other faculty of the mind though inferior to knowledge in respect of intensity of persuasion, plays quite as important a part in human speculation and action, and, as connected with jurisprudence, demands our attention even more. It is the faculty by which our minds take ideas to agree or disagree, facts or propositions to be true or false, by the aid of intervening ideas whose connection with them is either not constant and immutable, or is not perceived to be so.. The foundation of this is the probability or likelihood of that agreement or disagreement, of the truth or falsehood, deduced or presumed from its conformity or repugnancy to our knowledge, observation, and experience. Judgement is often based on the testimony vouching their observation or experience but this is clearly a branch of the former, as our belief in such cases rests on a presumption of the accuracy and veracity of the narrators."

The best evidence rule."Phipson on Evidence," 9th ed. P. 51 under caption: "The Best Evidence Rule. Strict Proof" Says: "The maxim that "the best evidence must be given of which the nature of the case permits." has often been regarded as expressing the great fundamental principle upon which the law of evidence depends. Although, however, it played a conspicuous part in the early history of the subject, the maxim at the present day affords but little practical guidance. The applicability of the rule depends on the nature of the subject to be proved. In the complicated nature of things today the emphasis has somewhat changed. (P. 53) According to Phipson,"In the present day, then, it is not true that the best evidence must, or even may, always be given, though its non-production may be matter for comment or affect the weight of that which is produced. All admissible evidence is in general equally receivable. Thus, circumstantial evidence is no longer excluded by direct, and even in criminal cases the *corpus delicti* may generally be established by

either species, or, indeed, by the defendant's mere admissions out of Court".

The following common characteristics of the first group of seven cases are found in this case. while answering its terms of reference so as to justify a finding of a general plan of "Ulfoside" i.e., deliberate killing of ULFAs and their relatives, on their basis, namely:

1. That this killing involved an ULFA related family, being that of the ULFA leader Shri Raju Baruah, and its investigation is kept pending, but no clue..
2. Like in other cases, this killing, of Dwijen Haloi and Pulen Haloi, were committed in the dead of night
3. The assailants covered their faces with black wrappers and caps, to avoid being identified, but they having spoken in Assamese and having proved that they knew

Dwijen, his wife Bharati, and his brother putul, cousin Pulen, and having addressed Dwijenda and Bou helped their being identified to be of a group.

4. The weapon used in killing were firearms of prohibited bore being . 9 mm and A.K. 47 series generally found in police-military situations.
 5. The firearms being of prohibited bores, forensic/ ballistic examination of the material exhibits was avoided. Investigation fizzled out. As in other cases of this group
 6. The vehicles used were never detected or seized as in other cases of the group..
 7. The murder was designed. Planned and executed in such a way that they would have to face none.
 8. That there was lurking evidence of unholy Police-SULFA nexus in the killings, some of the latter being constituted into an extra-constitutional authority and used as the executioners..the *modus operandii* being to visit the family, ask members about its ULFA member to surrender, failing which, to come a day or two before, to survey the way, location and structure of the house and come afterwards at dead of night and shoot him /them dead.
 9. There was similarity of *modus operandii* with some other cases of the group where SULFAs are suspected to have been involved.
 10. There was connivance of SULFA; and omission to make any SULFA an accused despite clues.
 11. The investigation did not commensurate with the seriousness of the crime perpetrated..
 12. That modern scientific methods of investigation, finger/foot prints, dog-squads were never used.
 13. No condolence message was sent from the Govt. of Assam to the victim family.
 14. No ex-gratia/compensatory payment was made or offered by the Govt. of Assam.in this case.
 - 15 In this case death penalty has been imposed for "status offences," on Dwijen and Pulen Haloi for being relative of an ULFA family of the ULFA leader Shri Raju Barua..
 16. From this case "remote orchestration" and principle of "kill and get killed" are deducible. The then remote might be at Home. This conclusion is based on the similarities of the seven cases in all respects, which could not be so unless there was remote orchestration from higher authorities. The remote was supposed to be at Home. The kill and get killed applied to a SULFA leader.
- Status Offence. Glanville Williams in his Textbook of Criminal Law discussing offences without conduct writes (p.36). "One might suppose, then, that the requirement of some relevant conduct, whether by act or culpable omission, would be regarded as the foundation of every criminal charge; and that knowledge of this rule will be part of the elementary learning of the lawyer- a *pans asinorum* in every examination for the bar or for the solicitor's profession. As will have been gathered, the assumption would be wrong. partly because of some of the wording of the legislation and partly because of the failure of the courts to develop a liberal principle of interpretation, an offence can be committed without any act or culpable omission at all. The offences of this type have been aptly called status offences; they are committed by people who simply find themselves with a particular label. (It is perhaps not without significance that status offences commended themselves particularly to tyrannical regimes; the criminal code of Stalin's Russia abounded with them, as for example, the offence of being a relative of an enemy of the people.)

Dwijen Haloi and Pulen Haloi were killed for their being members of this family of the "enemy of the people," Shri Raju Barua, as decided by the then authority in power; and executed by its agents and collaborators. Who else could execute it? The authority is all pervading so much so, that even the Criminal Procedure Code, and for that matter the Indian Penal Code has been rendered otiose.

By the terms of reference we are to find out the motive of the killing. Witnesses deposed that there could be no other reason for killing of Dwijen Haloi and Pullen Haloi except because they were related by marriage of Smti Bharati kalita Haloi, elder sister of the ULFA leader Raju Barua.

Questioned on the two cases, namely, that of killing of Dimba Rajkonwar and that of Dr. Dharanidhar Das and family, Shri G.M. Srivastava, presently DGP, Tripura said before the Commission (A, 88) "Normally police compares the cases on the basis of *modus operandi* and circumstances." Applying this principles we find this case to be similar with some other cases of the group.

Regarding the SULFAs suspected, it may be appropriate to observe that because of the position in which the SULFAs found themselves, between the devil and the deep sea.. their erstwhile colleagues having been antagonised by their act of surrender, they deserved adequate protection, But using their services as "guides, "spotters". Trouble-shooters and cclaborators in police functions could never be viewed as proper treatment meted out to the SULFAs, far less their being used as the striking arm or the men in charge of the trigger. Let them now be bereft of the hallowed positions, and give them fair field and no favour, at least following the insolvency principle of allowing the declared insolvent to have a fresh start in life. How the erstwhile affected people will adore or avoid them will be a different matter altogether..

So far as the Government wings, agencies, and authorities, both official and political, the principle of "resposndent superior" will surely apply; and for all the lapses and misdeeds at the lower levels, higher levels authorities shall be held liable and be subjected to proper punishments. So far as political and minister level authorities are concerned, the principle of collective resplonsibility will hunt out all those who were forming Govtrnment in the State at the relevant period. This principle of collective responsibility will hunt them out wherever they happen to be, during the period following the violation of Constitutional and legal rights of the affected citizens whose fundamental and other legal and human rights were violated during their faulty governance. But even here the insolvency principle should be followed and the political insolvents also be given fair field and no favour in the ensuing political process of the State. Let there be no witch hunting of any sort. How the same affected people will accept or reject them will, of course, be an entirely different matter..

(E) Recommendations to prevent recurrence of such killings.

With its limited knowledge, experience and wisdom, to prevent recurrence of such killings, the Commission would like to make twofold recommendations, namely, (1) the immediate, and (2) the long term.

- (1) The immediate measure is, first to try to keep in abeyance, and then gradually dismantle the existing Unified Command structure. which is neither a statute nor a statutory order, but only an arrangement agreed to by the Centre and the State Govt. regarding deployment and operation of the armed forces and other forces of the Union deployed by the Central Govt, "in aid of civil power" of the State of Assam, on request/ requisition by the State

Govt. The Structure itself envisages its review after every three months; and there is no limit to the review and may even envisage its dismantling. The parties concerned may agree to dismantle it in the same way they agreed to create it. The constitutional position as to deployment of the armed forces and other forces of the Union in a State has already been discussed in para 14 of "Part I. INTRODUCTORY." of this report and is referred to in this context. The deployment of the armed forces and other forces of the Union in the State of Assam has been "in aid of the civil power of the State." In case of the civil power of the State being sufficient enough to cope with its civil problems, *ex hypothesi*, there is no need of armed forces or other forces of the Union for the State.. The armed forces and other forces of the Union were deployed to cope with the internal disturbance thought to have been caused by the activities of the banned outfits disturbing the area leading to its declaration as a disturbed area under the Disturbed Areas Act. However, the disturbance has to a great extent been under control. The life in the State has become normal. The last Assembly election could be held without any disturbance, thanks to the co-operation of the local banned outfits. This may be an appropriate time for effective talks with the local outfits to observe cease fire. first for a short period, say six months, and for gradually longer and longer periods, and for restoration of normalcy and confinement of the armed forces and other forces of the Union to the barracks, and on continuation and assurance of normalcy, ultimately withdraw, on an assurance of peace on the part of the banned outfits and ultimately lifting of their bans themselves. To achieve this, strenuous, but cordial, talks between the outfits, the State Government and the Central Govt would be necessary; and there is no reason why such talks should not succeed. Restoration of normalcy. Disturbance and insurgent activities invited the Unified Command Structure. It is in the hands of the people to assure that peace will be maintained and insurgent activities will be curbed and normalcy will be restored. If the public are serious in this restoration of normalcy, there can be no earthly reason why such a situation cannot be brought about by mutual co-operation of the State and its people. Modalities may be worked out in consultation and cooperation among the Government, the political parties, student organizations, the outfits and the general public. Restoration of normalcy will also effect economy.. Meanwhile, in the interest of peace and tranquility, there should be no witch hunting. Constitutionally speaking, restoration of normalcy is the terminus of internal disturbances and army deployment in the State.

- (2) The long term measures are meticulous observation of the provisions of the Constitution and the laws in carrying out each and every function of the government. All the departments of the Government must function faithfully in accordance with the mandatory provisions of the Constitution of India. In other words, the **long term measures** may include, in the long run, the faithful obedience to, and implementation of, the Constitution and the laws of the country, The Centre-State relationship must also be in accordance with the mandates of the Constitution. Guidance of the famous Sarkaria Commission's report will be helpful in this regard. Manusmriti said (Buller) VIII, 351. "By killing an assassin the slayer incurs no guilt, (whether) he does it in public or secretly; in that case, fury recoils upon fury." 386. "That king in whose town lives no thief, no adulterer no defamer, no man guilty of violence and no committer of assaults attains the world of Sakra (Indra)"; 420. "A king who thus brings to a conclusion all the legal business enumerated above, and removes all sin, reaches the highest state (of bliss)" **Sukracharya's Dandaniti is based on danda**, meaning, punishment. Ancient sages said that without *danda matsyanyaya* will prevail and the strong will devour the weak, even the sacred *prasada* of the *yajna* will be swooped at by crows. *Danda* keeps awake when the country is asleep. All people have innate

goodness in them, but some do not. In the absence of punishment those will demoralize others in the society. The norms and laws of today are not materially different. Secret killing amounts to denial of all the constitutional, legal and human rights to the killed, and violation of all these rights by the killer. If killing is by public authorities, it also means trampling over the oaths taken by them on assumption of public offices. The society need be protected from the people with such dangerous propensities. It is trite learning that every action has a reaction, fury generates fury and that brutalities generate more brutalities. Continuous disturbance of the even keel of the society and some excesses committed by some elements had to be checked by equally harsh measures, but that would not justify the lawfully established Government in abdicating its powers, duties and responsibilities to extra-Constitutional organs jeopardizing the legal, fundamental and human rights of the citizens of sovereign, socialist and democratic Republic of India.. Those who are entrusted by the people to govern them, ought to be well versed with the provisions of the Constitution of India and the relevant laws, rules, and administrative instructions, and orders framed thereunder. They should be aware of the constitutional limitations as also the rights of the citizens of the State against their State itself. Fundamental rights of citizens, including rights to life, liberty, freedoms, non-discrimination etc. must not be violated. They must never have propensity to kill the citizens they govern, secretly or openly. They must not harbour any kind of hatred or dislike on numerical, religious, communal, racial, ethnic, social, historical, or of any sort whatever. At the minimum they should be true to their oaths and be absolutely free from corruption in any form and manner..While no training course will be appropriate, considering their exalted position and prestige, periodical seminars and discussions at government levels may refresh their knowledge and experience.

The Police department is the first resort of the people for protection of their life, liberty, property etc. Spreading disaffection towards police is an offence. Everyone has the duty to help police in restoring law and order in society. There is no doubt that our Police force is one of the best in the country. To make our police still more and more efficient and instructed, some officers, by turn, may be sent for advanced training in detection and decision in modern crimes and criminal practices. Such trained police personnel may be put in the police training College. They should undergo a training course in human right and cyber and other present day crimes and crime prevention.

(F) *Any other matter related or relevant to the inquiry*

Under this term of reference the Commission has decided to discuss the "related or relevant" matter of adequate *ex-gratia* or compensatory payment to the family of the victims Dwijen Haloi, and Pulen Haloi commensurate with the loss and deprivation suffered and obstacles encountered by it in its development in the line, and to the extent, hitherto planned by the deceased. We are all proud of our welfare State. In case of any mishap or calamity befalling any one or more of our citizens or families, the welfare State considers it to be its duty to render rescue and relief to the affected persons, more so when the sufferers have reasons to feel that the State itself was the immediate, or even remote, cause of the misery. The rendering of rescue, relief and recompense is irrespective of any fault on the part of the State. It is really praiseworthy of the Chief Ministers of the States in India to have instantly announced such reliefs and rehabilitation packages, and offer in appropriate cases, employments to the surviving eligible members of the families, inasmuch as sometimes the very bread earning patriarch is lost to the family. Even the Legislature has now provided for payment of suitable "no-fault liability" compensation irrespective of the claim for fault liability. In the instant case

the bread-earning patriarch of the family, Shri Dwijen Haloi and his cousin Shri Pulen Haloi have been shot dead under the circumstances discussed in the case. The public prosecution may result in punishment of the culprits, but that itself will bring no financial and livelihood replenishment of the loss suffered by the survivors, including the minor children of the bereaved family. The Commission, as submitted by the learned senior counsel for the Commission and the learned Senior Government Advocate, Assam, and for the ends of distributive justice, doth hereby direct the State Government of Assam to pay to the widow of the victim, Smti Bharati **Kalita Haloi, for the benefit of the families of Dwijen Haloi and Pulen Haloi**, a sum of Rs10,00,000 (Rupees tenlakh only). forthwith. More than five years have already elapsed, and it brooks no farther delay. Directed accordingly.

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APPENDICES

NOTIFICATION

1. Hon'ble Justice (Retd) Shri. K.N. Saikia, Supreme Court of India for favour of information and necessary action. He is requested kindly to furnish the terms and conditions and the last pay drawn by him as Judge and pension drawn at present.

2. The Secretary to the Govt. of India, Ministry of Home Affairs, New Delhi.
3. The Commissioner & Secretary to the Chief Minister, Assam.
4. The Secretary to the Hon'ble Governor of Assam.
5. The P.S. to Minister of State Home Assam, Dispur
6. The P.S. to all Ministers/ Ministers of State, Assam
7. The P.S. to Chief Secretary, Assam.
8. The P.S. to Addl. Chief Secretary, Home & Political Deptt., Assam
9. The P.S. to Addl. Chief Secretary, Assam
10. The Director General of Police, Assam, Guwahati- 7. He is requested to place one car at his disposal as desired by Chief Minister
11. The P.S. to Hon'ble Chief Justice, Gauhati High Court
12. The Secretary Commission of enquiry. He is requested to place all the papers at the disposal of Hon'ble Justice (Retd) Mr. K.N. Saikia and report to him for further instructions.
13. The Registrar, Gauhati High Court, Guwahati
14. The Advocate General, Assam, Guwahati.
15. All Commissioner of Divisions.
16. The Inspector General of Police (SB), Assam, Kahilipara
17. The Inspector General of Police (Security), Assam, Kahilipara
18. All Superintendents of Police, Assam.
19. The Director of Information & Public Relations, Assam. He is requested to give publicity in the News Bulletin of TV/AIR
20. The Trade Adviser & Director of Movements, Assam House, 8 Russel Street, Kolkata- 71.
21. The Under Secretary to the Govt. of Assam, SA (A) Dep'tt.
22. The Joint Director, Printing & Stationery, Assam Goyt. Press, Bamunimaidam, guwahati-21. He is requested to publish the Notification in the Extra-Ordinary Gazette today. 100 copies of the Notification may pleased be sent to this department immediately."

By order ,etc.,

Bh. K. Gohain

(Dr. B.K. Gohain)

Commissioner & Secretary to Govt. of Assam,
Home, Political, etc. Departments

&
Commissioner & Secretary to Chief Minister, Assam

GOVERNMENT OF ASSAM
POLITICAL (A) DEPARTMENT, DISPUR

111

NOTIFICATION

Dated Dispur, the 3rd September, 2005

No. PLA. 331/2005/2 : In continuation of the earlier Notification No. PLA. 331/2005/1 dated 22.08.05, the Governor of Assam is pleased to order that the Commission of Inquiry headed by Shri K.N. Saikia, Hon'ble Justice (Retd) of Supreme Court of India shall enquire into any other incidents of killings under similar circumstances which occurred during the period from January, 1998 to 2001. It shall also enquire into the alleged attempted murder of Shri Ananta Kalita of Hajo under the same terms and conditions as stipulated in the notification under reference.

Sd/- Dr. B.K. Gohain
Commissioner & Secretary to the Govt. of Assam,
Home & Political Departments
&
Commissioner & Secretary to Chief Minister, Assam

Memo No. PLA. 331/2005/2-A

Dated Dispur, the 3rd September, 2005

Copy to :

1. Hon'ble Justice (Retd) Shri. K.N. Saikia, Supreme Court of India for favour of information and necessary action
2. The Secretary to the Govt. of India, Ministry of Home Affairs, New Delhi.
3. The Commissioner & Secretary to the Chief Minister, Assam.
4. The Secretary to the Hon'ble Governor of Assam.
5. The P.S. to Minister of State Home Assam, Dispur
6. The P.S. to all Ministers/ Ministers of State, Assam
7. The P.S. to Chief Secretary, Assam.
8. The P.S. to Addl. Chief Secretary, Home & Political Deptt., Assam
9. The P.S. to Addl. Chief Secretary, Assam
10. The Director General of Police, Assam, Guwahati- 7. He is requested to place one car at his disposal as desired by Chief Minister
11. The P.S. to Hon'ble Chief Justice, Gauhati High Court
12. The Secretary Commission of enquiry. He is requested to place all the papers at the disposal of Hon'ble Justice (Retd) Mr. K.N. Saikia and report to him for further instructions.
13. The Registrar, Gauhati High Court, Guwahati
14. The Advocate General, Assam, Guwahati.
15. All Commissioner of Divisions.

- 14
16. The Inspector General of Police (SB), Assam, Kahilipara
 17. The Inspector General of Police (Security), Assam, Kahilipara
 18. All Superintendents of Police, Assam.
 19. The Director of Information & Public Relations, Assam. He is requested to give publicity in the News Bulletin of TV/AIR
 20. The Trade Adviser & Director of Movements, Assam House, 8 Russel Street, Kolkata- 71.
 21. The Under Secretary to the Govt. of Assam, SA (A) Dep'tt.
 22. The Joint Director, Printing & Stationery, Assam Govt. Press, Bamunimaidam, guwahati-21. He is requested to publish the Notification in the Extra-Ordinary Gazette today. 100 copies of the Notification may pleased be sent to this department immediately."

By order ,etc.,



(Dr. B.K. Gohain)
Commissioner & Secretary to Govt. of Assam,
Home, Political, etc. Departments
&
Commissioner & Secretary to Chief Minister, Assam

GOVERNMENT OF ASSAM
POLITICAL (A) DEPARTMENT.

ORDERS BY THE GOVERNOR

NOTIFICATION

Dated Dispur, the 8th March, 2006.

NO.PLA. 331/2005/10 : In continuation of this Department's Notification No.PLA. 331/2005/1, dated 22nd August, 2005, the Governor of Assam is pleased to extend the term of the Hon'ble Justice K.N. Saikia Commission of Inquiry for another period of 6 (six) months with effect from 21-2-2006 or till submission of its report, whichever is earlier.

Sd/- Rajiv Kumar Bora,
Commissioner & Secy. to the Govt. of Assam,
Home and Political Department.

Memo No.PLA. 331/2005/10-A, Dated Dispur, the 8th March, 2006.
Copy to :-

- 1) Hon'ble Justice (Retd.) Shri K.N. Saikia, Supreme Court of India for favour of information and necessary action.
- 2) The Secretary to the Government of India, Ministry of Home Affairs, New Delhi.
- 3) The Secretary to the Hon'ble Governor of Assam, Raj Bhawan, Guwahati.
- 4) The P.S. to Chief Secretary, Assam, Dispur, Guwahati-6.
- 5) The P.S. to Additional Chief Secretary, Home and Political Department, Assam, Dispur, Guwahati-6.
- 6) The P.S. to Additional Chief Secretary, Assam, Dispur, Guwahati-6.
- 7) The Director General of Police, Assam, Ulubari, Guwahati-7.
- 8) The P.S. to Hon'ble Chief Justice, Gauhati High Court, Guwahati-1.
- 9) The Secretary to Justice K.N. Saikia (Retd.) Commission of Inquiry, Circuit House, Guwahati for information.
- 10) The Registrar, Gauhati High Court, Guwahati.
- 11) The Advocate General, Assam, Guwahati.

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- 12) All Commissioner of Divisions.
- 13) The Inspector General of Police (S.B.), Assam, Kahilipara, Guwahati-19.
- 14) The Inspector General of Police (Security), Assam, Kahilipara, Guwahati-19.
- 15) All Deputy Commissioners.
- 16) All Superintendents of Police, Assam.
- 17) The Director of Information & Public Relations, Assam, Dispur, Guwahati-6. He is requested to give publicity in the News Bulletin of T.V./A.I.R.
- 18) The Trade Adviser & Director of Movements, Assam House, 8 - Russel Street, Kolkata- 71.
- 19) The Under Secretary to the Government of Assam, Secretariat Admn. (Accounts) Department, Dispur, Guwahati-6.
- 20) The Joint Director, Printing & Stationery, Assam Govt. Press, Bamunimaidam, Guwahati-21. He is requested to publish the Notification in the Extraordinary Gazette to-day, 100 copies of the Notification may pleased be sent to this Department immediately.

By order etc.,

Joint Secretary to the Govt. of Assam,
Political (A) Department.

Handwritten signature
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NOTIFICATION

NO. PLA. 331/2005/16 : In continuation of this Department's Notification No. PLA. 331/2005/10, dated 8th March, 2006, the Governor of Assam is pleased to extend the term of the Hon'ble Justice K.N. Saikia Commission of Inquiry for another period of 6 (six) months with effect from 21-8-2006 or till the submission of its report, whichever is earlier.

Sd/- Rajiv Kumar Bora,
Commissioner & Secy. to the Govt. of Assam,
Home and Political Department.

Copy to :-

- 1) Hon'ble Justice (Retd.) Shri K.N. Saikia, Supreme Court of India for favour of information and necessary action.
- 2) The Secretary to the Government of India, Ministry of Home Affairs, New Delhi.
- 3) The Secretary to the Hon'ble Governor of Assam, Raj Bhawan, Guwahati.
- 4) The P.S. to Chief Secretary, Assam, Dispur, Guwahati-6.
- 5) The P.S. to Additional Chief Secretary, Home and Political Department, Assam, Dispur, Guwahati-6.
- 6) The P.S. to Additional Chief Secretary, Assam, Dispur, Guwahati-6.
- 7) The Director General of Police, Assam, Ulubari, Guwahati-7.
- 8) The P.S. to Hon'ble Chief Justice, Gauhati High Court, Guwahati-1.
- 9) The Secretary to Justice K.N. Saikia (Retd.) Commission of Inquiry, Circuit House, Guwahati for information. This is with reference to the Commission's letter No.JSCI./1/2005/477, dated 7-8-2006.
- 10) The Registrar, Gauhati High Court, Guwahati.
- 11) The Advocate General, Assam, Guwahati.

Contd....P/2...

-: 2 :-

- 12) All Commissioner of Divisions.
- 13) The Inspector General of Police (S.B.), Assam, Kahilipara, Guwahati-19.
- 14) The Inspector General of Police (Security), Assam, Kahilipara, Guwahati-19.
- 15) All Deputy Commissioners.
- 16) All Superintendents of Police, Assam.
- 17) The Director of Information & Public Relations, Assam, Dispur, Guwahati-6. He is requested to give publicity in the News Bulletin of T.V./A.I.R.
- 18) The Trade Adviser & Director of Movements, Assam House, 8 - Russel Street, Kolkata- 71.
- 19) The Under Secretary to the Government of Assam, Secretariat Admn. (Accounts) Department, Dispur, Guwahati-6.
- 20) The Joint Director, Printing & Stationery, Assam Govt. Press, Bamunimaidam, Guwahati-21. He is requested to publish the Notification in the Extraordinary Gazette to-day, 100 copies of the Notification may pleased be sent to this Department immediately.

By order etc.,

Joint Secretary to the Govt. of Assam,
Politicals(A) Department.

JUSTICE SAIKIA COMMISSION OF INQUIRY

Home and Political Department, Govt. of Assam

Notice/ Notification under Rule 5 (2) (a) & (b) of the Commission of Inquiry (Central) Rules 1972 (framed under section 12 of the Commission of Inquiry Act, 1952),

WHEREAS by Notification No. PLA. 331/2005/1 dated the 22nd August 2005, the Governor of Assam, in exercise of powers under section 3 of the Commission of Inquiry Act, 1952, hereinafter called "the Act," has been pleased to appoint Shri K.N. Saikia, Retired Judge of the Supreme Court of India as the Commission of Inquiry, hereinafter called the "Justice Saikia Commission of Inquiry", to enquire into the killings of the following persons, namely :-

1. Phuleswari Das	Barama	P.S. Case No. 76/98 Date of occurrence	12.8.1998
2. Dr. Dharani Das	Barama	P.S. Case No. 76/98 Date of Occurrence	12.8.1998
3. Smti. Rupjyoti Das	Barama	P.S. Case No. 76/98 Date of Occurrence	12.8.1998
4. Smti. Latika Das	Barama	P.S. Case No. 76/98 Date of Occurrence	12.8.1998
5. Dizen Haloi	Nalbari	P.S. Case No. 5/2000 Date of occurrence	4.1.2001
6. Phulen Haloi	Nalbari	P.S. Case No. 5/2000 Date of Occurrence	4.1.2001
7. Dipak Choudhury	Belsor	P.S. Case No. 132/2000 Date of occurrence	7.12.2000
8. Jyotish Sharma	Geeta Nager	P.S. Case No. 1/2001 Date of occurrence	3.1.2001
9. Dimba Rajkonwar	Dibrugarh	P.S. Case No. 387/1998 Date of occurrence	11.8.1998
10. Rajesh Misra	Tezpur	P.S. Case No. 541/1999 Date of occurrence	28.9.1999
11. Rajib Koch	Tezpur	P.S. Case No. 541/1999 Date of occurrence	28.9.1999

AND WHEREAS the aforesaid Commission is to inquire into, in each case, the following terms of reference, and any other matters with recommendations, if any namely :-

"(a) Circumstances, in each case, leading to the killing of the above mentioned victims.

(b) Identity of the killer (s) and accomplice (s), if any.

(c) To find out whether there was any conspiracy in targeting the victims and the motive behind such killings.

(d) Pinpoint responsibility on persons who were involved directly or indirectly in the commission of such killings.

(e) To make recommendations to prevent recurrence of such killings.

(f) Any other matter related to or relevant to the purpose of this inquiry”

AND WHEREAS the Commission has been empowered to exercise the powers and functions provided in the Act,

AND WHEREAS the Commission is required to submit its report within a period of 6 (six) months from the date of issue of the aforesaid Notification, i.e., by 21.2.2006;

AND WHEREAS in the absence of any Rules framed by the State of Assam under the Act, the Commission has decided to follow mutatis mutandis the Commissions of Inquiry (Central) Rules 1972 ;

NOW, THEREFORE , the Justice Saikia Commission in pursuance of the inquiry as prescribed under sub Rule (2) (b) of Rule 5 of the Commissions of Inquiry (Central) Rules 1972, hereinafter called “ the Rules “ and / or under sub-section (2) of section 5 of the Act, with a view to give all persons acquainted with the subject matter of the Inquiry / facts and circumstances of the killings, an opportunity of being heard, doth hereby invites from all persons, including relatives of the deceased, Local bodies, Organizations, Associations, Authorities, Officials, Press and Electronic Media and all others so acquainted, to furnish to the Commission statement of facts duly authenticated (preferably with two spare copies) relating to any or more of the aforesaid killings in the aforesaid terms of reference. The Commission would like to make it clear that—

1. The statements with Affidavits shall be furnished within 30 (Thirty) days from the date of publication of this Notice/ Notification addressed to the “Justice Sakia Commission of Inquiry” C/o “The Global Law Services (Nyaya Mimangsa)” Dr. S.K. Road, Dighali Pukhuri East, Guwahati- 781001
2. Every statement shall be in English or Assamese language and relate to facts relevant to the killings in the terms of reference and shall be accompanied by an Affidavit in support of the facts set out in the statement sworn by the deponent before a Magistrate of the First class or other authority legally empowered to administer the oath.
3. Every Affidavit shall be drawn up in First person and divided into paragraphs to be numbered consecutively, each material statement or fact being made the subject matter of a separate paragraph. The Affidavit shall state the description & occupation, if any, and the true place of abode of the deponent. Each Affidavit shall state at the beginning to which one or more of the persons killed it testifies..

4. If any such information is derived from any records, the particulars and nature of such document or record and the person in control or custody thereof should be indicated. If any part of the statement in the Affidavit is verified from any information received, the source of such information should be disclosed. The deponent shall along with his affidavit furnish a list of documents, which he intends to rely. He shall also file a list of witnesses with their full particulars and addresses, whom he would like to be examined in support of his facts.
5. The deponents shall be free to be represented by their own counsel to present and defend their cases.
6. After examination the statements they may be received in response to the Notice / Notification the commission may, if it considered necessary in the interest of justice, call upon any person filing an affidavit to file further affidavit and / or to appear before the Commission and give oral evidence in which case the statement filed before the Commission by the party may be treated as Examination-in-chief and shall be subject to cross-examination by the interested parties, if any.
7. The Commission would not accept any statement of facts not accompanied by duly verified Affidavit of not satisfying the other requirements set out above. However, the commission may in its discretion, in the interest of justice in the inquiry, accept such statement, and such acceptance shall not be liable to be challenged in the inquiry.

Dated this 9th day of September, 2005

(K.P.Dahotia)

Deputy Registrar

By order of the Commission.

JUSTICE SAIKIA COMMISSION OF INQUIRY**Home and Political Department, Govt. of Assam**

**Notice/ Notification under Rule 5 (2) (a) & (b) of the Commissions of Inquiry
(Central Rules 1972 (framed under section 12 of the Commissions of Inquiry
Act, 1952)).**

WHEREAS by Notification No. PLA.331/2005/2 dated 3rd September 2005, in continuation of the earlier Notification No. PLA 331/2005/1 dated 22.08.2005, the Governor of Assam has been pleased to order that the Justice Saikia Commission of Inquiry shall also enquire into the alleged attempted murder case of Shri Ananta Kalita of Hajo and any other incidents of killings under similar circumstances which occurred within the period from January 1998 to 2001, the Justice Saikia Commission of Inquiry in pursuance of the inquiry doth hereby give Notice/ Notification that the Commission's earlier Notice / Notification dated 9th September 2005 shall also equally apply to the subsequently added cases of Shri Ananta Kalita of Hajo and any other incidents of killing under circumstances similar to those in the earlier Notification No. PLA 331/2005/1 dated 22nd August, 2005, if and when the Commission is specifically intimated by the State Government.

Deputy Registrar**By order of Commission**

Dated the 15th September 2005

JUSTICE SAIKIA COMMISSION OF INQUIRY
Home and Political Department, Govt. of Assam
Notice under Rule 5(2) (a) of the Commission of Inquiry
(Central) Rules 1972 (framed under section 12 of the Commission of Inquiry
Act, 1952).

WHEREAS by Notification No. PLA.331/2005/1 Dated the 22nd August 2005, the Governor of Assam, in exercise of powers under section 3 of the Commission of Inquiry Act, 1952, hereinafter called "the Act," has been pleased to appoint Shri K.N.Saikia, Retired Judge of the Supreme Court of India as the Commission of Inquiry, hereinafter called the "Justice Saikia Commission of Inquiry", to enquire into the killings of the following persons, namely :-

- | | | |
|----------------------|-------------|--|
| 1. Phuleswari Das | Barama | P.S Case No. 76/98 Date of occurrence 12.8.1998 |
| 2. Dr. Dharani Das | Barama | P.S. Case NO. 76/98 Date of occurrence 12.8.1998 |
| 3. Smti Rupjyoti Das | Barama | P.S Case No.76/98 Date of occurrence 12.8.1998 |
| 4. Smti Latika Das | Barama | P.S Case No.76/98. Date of occurrence 12.8.1998 |
| 5. Dizen Haloi | Nalbari | P.S Case No.5/2000 Date of occurrence 4.1.2001. |
| 6. Phulen Haloi | Nalbari | P.S Case No. 5/2000 Date of occurrence 4.1.2001 |
| 7. Dipak Choudhury | Belsor | P.S Case No.132/2000 Date of occurrence 7.12.2000. |
| 8. Jyotish Sharma | Geeta Nagar | P.S Case No. 1/2001 Date of occurrence 3.1.2001 |
| 9. Dimba Rajkonwar | Dibrugarh | P.S Case No. 387/1998 Date of occurrence 11.8.1998 |
| 10. Rajesh Misra | Tezpur | P.S Case No.541/1999 Date of occurrence 28.9.1999 |
| 11. Rajib Koch | Tezpur | P.S Case No.541/1999 Date of occurrence 28.9.1999. |
| 12. Anata Kalita of | Hajo | |

AND WHEREAS the aforesaid Commission is to inquire into, in each case. The following terms of reference, and any other matters with recommendations, if any, namely:-

- (a) Circumstances, in each case, leading to the killing of the above mentioned victims.
- (b) Identity of the killer(s) and accomplice(s), if any.
- (c) To find out whether there was any conspiracy in targeting the victims and the motive behind such killings.
- (d) Pinpoint responsibility on persons who were involved directly or indirectly in the Commission of such killings.
- (e) To make recommendations to prevent recurrence of such killings.
- (f) Any other matter related to or relevant to the purpose of this inquiry",

AND WHEREAS the Commission has been empowered to exercise the powers and functions provided in the Act.,

AND WHEREAS the Commission is required to submit its report within a period of 6(six) months from the date of issue of the aforesaid Notification, i.e., by 21.2.2006,

AND WHEREAS in the absence of any Rules framed by the State of Assam under the Act, the Commission has decided to follow *mutatis mutandis* the Commission of Inquiry (Central) Rules 1972;

NOW , THEREFORE, the Justice Saikia Commission in pursuance of the inquiry as prescribed under sub Rule (2) (a) of Rule 5 of the Commissions of Inquiry (Central) Rules 1972, hereinafter called " the Rules" and / or under sub- section (2) of Section 5 of the Act, with a view to give every person, who in its opinion should be given an opportunity of being heard in the inquiry into the killings of in the P.S. Case No.....doth. hereby requires you to furnish to the Commission a statement on the said killing on.....in the form of an affidavit duly authenticated (preferably with two spare copies) relating to the aforesaid killings in the aforesaid terms of reference. The Commission would like to make it clear that-

1. The statements with Affidavits shall be furnished within 30 (Thirty) days from the date of publication of this Notice/Notification addressed to the "Justice Saikia Commission of Inquiry" C/o "The Global Law Services (Nyaya Mimangsa)" Dr. S.K. Bhuyan Road, Dighali Pukhuri East, Guwahati – 781001.
2. Every statement shall be in English or Assamese language and relate to facts relevant to the killings in the terms of reference and shall be accompanied by an Affidavit in support of the facts set out in the statement sworn by the deponent before a Magistrate of the First class or other authority legally empowered to administer the oath.
3. Every Affidavit shall be drawn up in First person and divided into paragraphs to be numbered consecutively, each material statement or fact being made the subject matter of a separate paragraph. The Affidavit shall state the description & occupation, if any, and the true place of abode of the deponent. Each Affidavit shall state at the beginning to which one or more of the persons killed it testifies.
4. If any such information is derived from any records, the particulars and nature of such document or record and the person in control or custody thereof should be indicated. If any part of the statement in the Affidavit is verified from any information received, the source of such information should be disclosed. The deponent shall along with his affidavit furnish a list of documents which he intends to rely. He shall also file a list of witnesses with their full particulars and addresses, whom he would like to be examined in support of his facts.
5. The deponents shall be free to be represented by their own counsel to present and defend their cases.
6. After examination of the statements they may be received in response to the Notice/Notification the commission may, if it considered necessary in the interest of justice, call upon any person filing an affidavit to file further affidavit and/or to appear before the Commission and give oral evidence in which case the statement filed before the commission by the party may be treated as Examination-in-chief and shall be subject to cross –examination by the interested parties, if any—
7. The Commission would not accept any statement of facts not accompanied by duly verified Affidavit or not satisfying the other requirements setout above. However, the Commission may in its discretion, in the interest of justice in the inquiry, accept such statements, and such acceptance shall not be liable to be challenged in the inquiry.

Dated this 18th day of October, 2005

(K.P. Dohotia)
Deputy Registrar
By order of the Commission

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JUSTICE SAIKIA COMMISSION OF INQUIRY
Home and Political Department, Govt. of Assam
Notice under Section 8B of the Commissions of Inquiry Act, 1952.
To.....

WHEREAS in course of inquiry into the killings of.....
P.S. case No.....evidence has been produced the discussion and
conclusion whereof may prejudicially affect some persons or necessitate inquiry into the
conduct of persons;

AND WHEREAS the Justice Saikia Commission of Inquiry considers it obligatory to
give those persons a reasonable opportunity of being heard in the inquiry and to produce
evidence in their defence;

Now, therefore, you are to take this notice under section 8B of the Commission of Inquiry Act,
1952, in the aforesaid inquiry, that you are one of such persons who may be prejudicially
affected or whose conduct may have to be enquired into and that you are given this opportunity
to produce evidence in your defence. This is also to inform you that under section 8C of the
said Act that the appropriate (State) Government and every person referred to in section 8B and
with the permission of the Commission any other person whose evidence is recorded by the
Commission (a) may cross-examine a witness other than produced by it or him; (b) may
address the Commission; and (c) may be represented before the Commission by a legal
practitioner or, with the permission of the commission, by any other person.....

SECRETARY
JUSTICE K.N SAIKIA COMMISSION OF INQUIRY

LIST OF WITNESSES

- | | |
|-------------|--------------------------|
| 1. P.W. - 1 | Smti. Bharati Rajkonwary |
| 2. P.W. - 2 | Mrs. Lakhimi Deka |
| 3. P.W. - 3 | Shri Rajkonwar |
| 4. P.W. - 4 | Shri Gangadhar Doley |

LIST OF GOVT. WITNESSES

- | | |
|---------------|---------------------------|
| 1. G.W. - 1 | Mr. Budhin Gogoi |
| 2. G.W. - 2 | Md. Taffazul Hussain |
| 3. G.W. - 3 | Shri Kanak Ch. Deka |
| 4. G.W. - 4 | Shri Prabhat Gogoi |
| 5. G.W. - 5 | Shri Rajen Saikia |
| 6. G.W. - 6 | Shri Raheswar Das |
| 7. G.W. - 7 | Shri Subrajyoti Hazarika |
| 8. G.W. - 8 | Dr. Hemanta Kr. Mahanta |
| 9. G.W. - 9 | Shri Kulendra Nath Phukan |
| 10. G.W. - 10 | Shri Apurba Kr. Sarma |

LIST OF NOTICEE WITNESS

- | | |
|-----------|--------------------------|
| 1. N.W. 1 | Shri Prafulla Kr. Mhanta |
|-----------|--------------------------|

BARAMA P.S. CASE NO. 76 / 98

LIST OF WITNESSES

- | | |
|-------|---|
| P.W.1 | Shri Bhaba Medhi,
Secretary, Baska Press Club, Barama. |
| P.W.2 | Dr. Sunil Ch. Sarma
Lecturer in Assamese, Barama College. |
| P.W.3 | Sri Kali Kanta Das (first Informant)
Retired Teacher, Vill- Niz Juluki, Barama |
| P.W.4 | Dr. Jatindra Chandra Choudhury of Nalbari Civil Hospital |
| P.W.5 | Dr. Nalini Kanta Sarma of Nalbari Civil Hospital |
| P.W.6 | Shri Ram Chandra Das of Barama Anchalik Sahitya Sabha |
| P.W.7 | Shri Nagen Chandra Das |
| P.W.8 | Shri Khanin Ali Patgiri, of Barama Sahitya Sabha |
| P.W.9 | Shri Nitul Kachari of Barama |

LIST OF NOTICEE WITNESSES

- | | |
|--------|---|
| N.W. 1 | Shri Apurba Jiban Barua (The then Addl. S.P., Nalbari)
Now S.P., Sonitpur, Tezpur. |
| N.W. 2 | Shri Ranjan Bhuyan (The then DSP, Nalbari)
Now Addl. S.P., Sonitpur, Tezpur. |
| N.W. 3 | Shri Dwijumani Singh, (The then O.C. Barama P.S.)
Now Inspector, Bureau of Investigation (EO) Assam. |
| N.W. 4 | Shri Prafulla Kr. Mahanta (The then Chief Minister) |
| N.W. 5 | Jugal Kishore Mahanta, |
| N.W. 6 | Shri Ghanashyam Mauri Srivastava (The then IGP,
Operation). Now DIG, Tripura. |

ANANTA KALITA

HAJO P.S. CASE NO. 155 / 99

BASISTHA P.S. CASE NO. 224 / 99

LIST OF WITNESSES

P.W. - 1	Shri Ananta Kalita
P.W. - 2	Shri Mantu Kalita
P.W. - 3	Shri Biren Kalita
P.W. - 4	Shri Hari Chandra Das
P.W. - 5	Shri Dilip Patgiri
P.W. - 6	Shri Nekibur Zaman
P.W. - 7	Shri Bimal Pd. Choudhury
P.W. - 8	Dr. Hemen Nath
P.W. - 9	Dr. Bijon Bihari Dey
P.W. - 10	Dr. Ajit Kumar Thakuria
P.W. - 11	Shri Sabin Kalita

LIST OF NOTICEE WITNESSES

N.W. - 1	Shri Swapan Kr. Dasgupta
N.W. - 2	Shri Ajit Pd. Rout
N.W. - 3	Shri Ajmol Ali
N.W. - 4	Shri Dilip Kr. Bora
N.W. - 5	Shri Binoy Kr. Mishra
N.W. - 6	Shri Chidananda Bora
N.W. - 7	Shri Bhaskar Jyoti Mahanta
N.W. - 8	Shri Birendra Kr. Nath
N.W. - 9	Shri Prasanta Dutta
N.W. - 10	Shri Prafulla Kr. Mahanta
N.W. - 11	Shri Ghanashyam Murari Srivastava
N.W. - 12	Shri Nurul Hussain

LIST OF WITNESSES

P.W. – 1	Shri Prem Narayan Mishra
P.W. – 2	Shri Ratan Dutta
P.W. – 3	Shri Jiban Bora
P.W. – 4	Shri Jatindra Nath Koch
P.W. – 5	Shri Sachi Prova Devi
P.W. – 6	Shri Bhola Koch
P.W. – 7	Shri Sailendra Bora
P.W. – 8	Shri Bapdhan Koch.
P.W. – 9	Shri Utsav Talukdar
P.W. – 10	Shri Champak Koch
P.W. – 11	Shri Brindaban Goswami
P.W. – 12	Shri Padma Hazarika

LIST OF NOTICEE WITNESSES

N.W. – 1	Shri Gunadhar Das
N.W. – 2	Shri Rajendra Kumar, the then DIG (Northern Range), IGP (OSD), Ulubari, Guwahati
N.W. – 3	Shri LR. Bishnoi (the then SP., Tezpur) DIG (CR), Diphu.
N.W. – 4	Md. Abu Sufian (The then DSP., HQ., Tezpur) Command, 11 A.P. Bn., the Dergaon.
N.W. – 5	Shri Nilachal Bharali (The then O.C., Tezpur) O.C., Tinsukia P.S.
N.W. – 6	Shri Mahesh Chandra Bora (Then I.O.) 2 nd officer, Duliajan P.S.
N.W. – 7	Shri Tapan Chandra Sarma (The then ADC, Tezpur) Project DRDA, Kamrup, Guwahati.
N.W. – 8	Shri Abhijit Bora (then Addl. S.P., Sonitpur) S.P. Karimganj.
N.W. – 9	Shri Prafulla Kr. Mahanta (The then Chief Minister)
N.W. – 10	Shri Bibek Nath
N.W. – 11	Shri Ghanashyam Murari Srivastava (The then IGP, operation) DGP, Tripura.

LIST OF WITNESSES

- | | |
|-------------|---------------------------|
| 1. P.W. – 1 | Shri Paresh Choudhury |
| 2. P.W. – 2 | Shri Dinabandhu Choudhury |
| 3. P.W. – 3 | Dr. Nirendra Nath Bhuyan |

LIST OF NOTICEE WITNESSES

- | | |
|-------------|---------------------------|
| 1. N.W. – 1 | Shri Pranab Kumar Bora |
| 2. N.W. – 2 | Shri Deepak Kumar |
| 3. N.W. – 3 | Shri Bidyut Buragohain |
| 4. N.W. – 4 | Shri Monoranjana Kakati |
| 5. N.W. – 5 | Shri Sunil Kumar Nath |
| 6. N.W. – 6 | Shri Puspendra Medhi |
| 7. N.W. – 7 | Shri Ranjan Bhuyan |
| 8. N.W. – 8 | Shri Mahendra Nath Kalita |
| 9. N.W. – 9 | Shri Nirmal Kumar Baruah |

GEETANAGAR P.S. CASE NO. 1 / 2001

LIST OF WITNESSES

P.W. - 1	Smti. Anima Devi
P.W. - 2	Dr. Prabin Ch. Choudhury
P.W. - 3	Shri Dhiraj Das
P.W. - 4	Shri Bhagawan Ch. Haloi

LIST OF NOTICEE WITNESSES

N.W. - 1	Shri Nomal Ch. Gogoi
N.W. - 2	Shri Mani Saikia
N.W. - 3	Shri Prasanta Kr. Dutta
N.W. - 4	Shri G.P. Singh

CIRCUIT HOUSE, GAUHATI

NALBARI P.S. CASE NO. 5 / 2001

LIST OF WITNESSES

- | | |
|----------|----------------------------|
| P.W. - 1 | Shri Rajani Kt. Haloi |
| P.W. - 2 | Dr. Prabin Ch. Choudhury |
| P.W. - 3 | Mrs. Bharati Kallita Haloi |

LIST OF NOTICEE WITNESSES

- | | |
|----------|-------------------------|
| N.W. - 1 | Shri Ranjan Bhuyan, APS |
| N.W. - 2 | Shri Dipak Kumar, IPS |
| N.W. - 3 | Shri Bidyut Buragohain |
| N.W. - 4 | Shri Satyaram Malakar |